

# Hastings Women's Law Journal

Volume 28  
Number 2 Summer 2017

Article 7

Summer 2017

## Where's My Dad? A Feminist Approach to Incentivized Paternity Leave

Jennifer E. Karr

Follow this and additional works at: <https://repository.uchastings.edu/hwlj>



Part of the [Law and Gender Commons](#)

### Recommended Citation

Jennifer E. Karr, *Where's My Dad? A Feminist Approach to Incentivized Paternity Leave*, 28 Hastings Women's L.J. 225 (2017).  
Available at: <https://repository.uchastings.edu/hwlj/vol28/iss2/7>

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Women's Law Journal by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact [wangangela@uchastings.edu](mailto:wangangela@uchastings.edu).

---

---

# Where's My Dad? A Feminist Approach to Incentivized Paternity Leave

*Jennifer E. Karr\**

## I. INTRODUCTION

The Family Medical Leave Act (FMLA), passed in and relatively unchanged since 1993, affords mothers and fathers twelve weeks of unpaid leave (if employed by a covered employer) after the birth of a child.<sup>1</sup> Covered employers need not give either mothers or fathers any paid leave, and certainly no more unpaid leave than twelve weeks. In fact, only sixty percent of employees are eligible to take unpaid leave after the birth of a child.<sup>2</sup> Only eleven percent of employers report offering any formal paid leave to new parents.<sup>3</sup> (To contrast, sixty-one percent of employers offer paid sick leave.<sup>4</sup>) Adding another dynamic, the ability to take leave is even scarcer among Hispanic, less educated, and low wage workers.<sup>5</sup> The United States is the only developed country that does not mandate government-sponsored paid maternity leave.<sup>6</sup>

While the FMLA was widely viewed as a major accomplishment when passed in 1993, it promoted the stereotypical “traditional family” structure and undermined the role of fathers in the home. The law has not kept pace with the evolution of parenting, which in part has included even more fathers staying at home to bond with and raise their young children. Children benefit greatly from bonding time with their fathers.<sup>7</sup> Women whose partners take paternity leave have increased earnings and decreased

---

\*Associate, Day Pitney, LLP. J.D., University of Connecticut School of Law. M.F.A., University of Central Florida. B.A., University of Central Florida. Thanks to Richard Karr, III and Steve Utz for early talks about this subject. Many thanks to Doug Spencer for all his hours spent reviewing and advising as I wrote this article.

1. Family Medical and Leave Act, 29 U.S.C. § 2612 (1993). Its provisions related to paid sick leave are beyond the scope of this paper.

2. COUNCIL OF ECON. ADVISORS, Exec. Office of the President, *The Economics of Paid and Unpaid Leave 1* (2014), [https://obamawhitehouse.archives.gov/sites/default/files/docs/leave\\_report\\_final.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/leave_report_final.pdf).

3. *Id.* at 1.

4. *Id.* at 4.

5. *Id.* at 1.

6. *Id.* at 3.

7. *See infra* note 74, and accompanying text.

levels of depression nine months after birth.<sup>8</sup> And contrary to the claims of some politicians, paid leave does not actually hurt businesses.<sup>9</sup>

In this article, I apply a reconstructive feminist perspective to the issue of paid parental leave, with a focus on paternity leave. For too long men have been relegated to the role of worker and women to the role of caretaker. As attitudes are changing and science has shown the benefit of father-child interaction, it is important that legislation change as well.

In Part II I trace the history of gender roles in the United States and the jurisprudence of family leave which fails to track these changes. Following the Second Wave Feminist movement of the 1960s, '70s, and '80s, the 1990s saw a peak in the number of working mothers. Between 1948 and 1985, the number of married mothers in the workforce grew from seventeen percent to sixty-one percent; by 1995, two years after the passing of the FMLA, seventy percent of married mothers worked.<sup>10</sup> The introduction of the FMLA in 1993 and the congressional record show that a main concern for legislators was this movement of women from their roles solely in the private sphere to the public sphere.<sup>11</sup>

Since 1993, there has been another shift—this time of fathers from their traditional role of being providers first and caretakers to children second to being stay-at-home dads. However, the FMLA has hardly been altered over the past twenty-three years. Most egregiously, the United States is the only industrialized nation which offers neither paid maternity nor paternity leave, and the only nation besides Papua New Guinea and Suriname to not offer paid maternity leave.<sup>12</sup> Less than two-thirds of Americans are legally entitled to unpaid leave at all.

Using the lens of reconstructive feminism, a design of the Third Wave which offers a more nuanced outlook on gender roles than the canonical liberal, difference, or radical feminism, we can begin to assess the changing needs of women and men as both workers and parents in the twenty-first century. As will be shown in Part IV, countries with more feminist cultures tend to have more equality in the workplace as well as better parental leave packages. For this reason, Part II also explains how reconstructive feminism can assist in altering cultural views on the roles of mothers and fathers.

---

8. Claire Cain Miller, *The Leave Seldom Taken*, N.Y. TIMES, Nov. 9, 2014, at BU1 [hereinafter *Leave Seldom Taken*].

9. See, e.g., 139 Cong. Rec. # (1993) (statement of Rep. Eliot Engel).

10. Sharon R. Cohany & Emy Sok, Bureau of Labor, *Trends in Labor Force Participation of Mothers with Infants*, MONTHLY LABOR REV., 9 (2007), <http://www.bls.gov/opub/mlr/2007/02/art2full.pdf>.

11. See *infra* notes 32–36 (discussing the many mentions in the congressional record of women's movement into the workplace).

12. Susanna Kim, *U.S. is Only Industrialized Nation without Paid Maternity Leave*, ABC NEWS (May 6, 2015), <http://abcnews.go.com/Business/us-industrialized-nation-paid-maternity-leave/story?id=30852419>.

In Part III I discuss several shortcomings in the law and public policy of paternity leave in the United States. Despite the growing role of men as caregivers, the law has failed to reflect these changes. Even though the FMLA offers twelve weeks leave to both mothers and fathers, fathers rarely take leave for fear of losing their jobs, losing the respect of their employers, and because they are unable to go twelve weeks without income. While the FMLA was mainly passed to allow working women time off to physically recover from childbirth and bond with their children, similar considerations were not taken into account for new fathers. Research has shown the exceptionally important nature of father-child interaction, especially in the early stages.<sup>13</sup> Unfortunately, with only the changing role of mothers being taken into account, the law has failed to accommodate new fathers.

In Part IV I describe and compare paternity compensation packages in several countries. I find that Scandinavian countries have the most generous policies, followed by Western Europe and Eastern Europe. I also discuss three family leave laws in Rhode Island, California, and New Jersey. Following the examples of these countries and states, I argue that Congress should pass a law providing generous parental leave packages to new parents.

The package should have six main aspects. First, parents should be given a total combined leave period of thirty-six weeks, with a twelve-week quota for each. In subsequent years, this leave time should be increased. Second, family leave pay should be at one hundred percent for the first twelve weeks and eighty percent thereafter. Third, family leave should be paid for by a small payroll tax. Fourth, employers should receive a tax credit when a minimum of eighty percent of its new parents take at least twelve weeks paid leave. Employers should also pay a small tax but receive a refund if eighty percent or more new mothers and fathers take leave. Fifth, there should be a return-to-work guarantee. In the event the employee no longer has their job following leave, an initial presumption should be against the employer. Sixth, employers should not be allowed to designate parents as “primary” or “secondary.” This package addresses financial concerns for new parents, encourages men to take at least twelve weeks instead of losing that time, and will help reshape our culture by incentivizing employers to encourage new fathers to take time.

Finally, in Part V I conclude that both a generous leave package and a feminist cultural outlook are necessary for equality in the workplace and at home.

---

13. *See infra* note 74.

## II. EVOLVING GENDER ROLES AND RECONSTRUCTIVE FEMINISM

In this part, I explore the changing roles of women and men as parents and workers in order to show the need for a more evolved system of parental leave. I will then discuss the history of the FMLA, which in many ways parallels the present debate over paid leave. This part will conclude with a brief look into feminist jurisprudence in order to provide a cultural basis for change.

### A. WORKING MOTHERS, CARETAKER FATHERS

In 1860, 7.5 percent of mothers worked.<sup>14</sup> In 2010, sixty-seven percent of mothers worked (an 800-percent increase).<sup>15</sup> While a number of laws have helped shape our workforce into one that, if not welcomes, allows women, those laws would not exist without cultural criticisms spurring political movements. For years women were seen as being complete only upon becoming mothers.<sup>16</sup> Women were expected to put child rearing above all other endeavors.<sup>17</sup> Men, on the other hand, were expected to provide financially for wife and children.<sup>18</sup> This binary controlled culture and still affects our legal system.

In 2010, seventeen percent of preschoolers were regularly cared for by their fathers while their mothers worked.<sup>19</sup> And in 2011, about 176,000 fathers worked as stay-at-home dads,<sup>20</sup> caring for 332,000 children.<sup>21</sup> By 2013, the number of fathers rose to 214,000.<sup>22</sup> (This does not include fathers who do not work outside the home—that number is about two

---

14. Stephanie Pappas, *Working Moms Up 800 Percent... Since 1860*, LIVE SCIENCE (May 10, 2014), <http://www.livescience.com/45476-working-mom-history.html>.

15. *Id.*

16. See, e.g., SIMONE DE BEAUVOIR, *THE SECOND SEX* 493 (1952) (discussing the duality of the internalization of society's expectation of women to become mothers and the fear that many women have of becoming mothers).

17. See, e.g., Jennifer Holt, *The Ideal Woman*, SOUNDINGS (2014), <https://www.csustan.edu/sites/default/files/honors/documents/journals/soundings/Holt.pdf> (describing the expectations of women as mothers and wives in the 1950s).

18. See, e.g., Michael S. Kimmel, *What Do Men Want?*, HARV. BUS. REV. (1993), <https://hbr.org/1993/11/what-do-men-want> ("a man's profession and his ability to bring home a paycheck have traditionally defined who that man was").

19. *Facts for Features*, U.S. CENSUS BUREAU NEWS, U.S. Dep't of Commerce (2012), [https://www.census.gov/newsroom/releases/archives/facts\\_for\\_features\\_special\\_editions/cb12-ff11.html](https://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb12-ff11.html)

20. The census bureau defines stay-at-home fathers as "married fathers with children younger than 15 [who] have remained out of the labor force for at least one year primarily so they can care for the family while their wives work outside the home." *Id.*

21. *Id.*

22. *Statistics on Stay-at-Home Dads*, NAT'L AT-HOME DAD NETWORK (2014), <http://athomedad.org/media-resources/statistics/>.

million.)<sup>23</sup> Thirty-two percent of married fathers—about seven million—are primary caregivers to their children.<sup>24</sup> This is double the amount of at-home fathers in 1989.<sup>25</sup> In fact, between just 2001 and 2011, the amount of stay-at-home parents who were fathers more than doubled.<sup>26</sup> This increasing change in the numbers of working mothers and stay-at-home fathers represents a dramatic evolution in culture, from a time when women were expected to be mothers first and men were expected to be providers first. In the early 1990s, Congress passed the FMLA in recognition of the movement of women into the workforce.

#### B. FMLA CONSIDERATIONS

Every now and then, social change outpaces every day needs. And when that happens, Government has a role to play—as a catalyst for change. That is how we came to have minimum wage laws, child labor laws, and OSHA. These are not excessive regulation, just sound and responsive public policy. Now we must add the Family and Medical Leave Act to that list. Americans want this legislation—so mothers and fathers can care for their children who are ill; so sons and daughters can help their ailing parents; so businesses can have productive workers who have the peace of mind to do their jobs.<sup>27</sup>

Although this quote from Representative Barbara Bailey Kennelly is taken from the FMLA congressional record discussions, it could easily apply to proposed paid leave legislation. Those who worked on (and against) the 1993 FMLA showed similar concerns to legislators' concerns today. They discussed: the movement of women (including mothers) into the workforce,<sup>28</sup> policies of other industrialized nations,<sup>29</sup> benefits to employers,<sup>30</sup> and benefits to children and families.<sup>31</sup> What they did not discuss was the changing role of men.

While this note argues for the importance of the growing number of men participating as equals or near-equals in the domestic sphere, the congressional record focuses, for the most part, only on the movement of

---

23. Gretchen Livingston, *Growing Number of Dads Home with the Kids*, PEW RESEARCH CTR., June 5, 2014, <http://www.pewsocialtrends.org/2014/06/05/growing-number-of-dads-home-with-the-kids/>.

24. *Statistics on Stay-at-Home Dads*, *supra* note 22.

25. Livingston, *supra* note 23.

26. Brad Harrington, Fred Van Deusen, & Iyar Mazar, *The New Dad: Right at Home*, BOSTON COLL. CTR. FOR WORK & FAMILY 4 (2012), <https://www.bc.edu/content/dam/files/centers/cwf/pdf/The%20New%20Dad%20Right%20at%20Home%20BCCWF%202012.pdf>.

27. 139 Cong. Rec. # (1993) (statement of Rep. Barbara Kennelly).

28. 139 Cong. Rec. # (1993) (statement of Rep.)

29. *Id.*

30. *Id.*

31. *Id.*

women into the public sphere. Representatives discussed the necessity of two-income households.<sup>32</sup> Representative Kennelly noted that “67 percent of mothers with schoolage or younger children are employed outside the home,”<sup>33</sup> and President Bill Clinton harped on the change from thirty-five percent in 1965.<sup>34</sup> Clinton also looked to projected statistics, such as the growth of single parent families and the percentage of families with two working parents.<sup>35</sup> House reports, too, show attention paid to the movement of women into the workplace.<sup>36</sup>

While many representatives did argue for the need of mothers *and* fathers to stay home with newborns, only a few direct mentions of fathers grace the congressional record. In his statement, President Clinton mentioned the fact that a mere six percent of employers offered unpaid paternity leave.<sup>37</sup> The record shows a concern that holds true today: “a policy that affords women employment leave to provide family care while denying such leave to men perpetuates gender-based employment discrimination and stereotyping and improperly impedes the ability of men to share greater responsibilities in providing immediate physical and emotional care for their families.”<sup>38</sup>

Later in this note I graph the parental leave offered by other nations in comparison to the United States; these graphs show that countries in Scandinavia, Western Europe, and Eastern Europe all offer far better paternity leave packages than the United States.<sup>39</sup> A 1993 House report shows that representatives also considered the status of family leave in other industrialized nations when discussing the FMLA. As then we were the only industrialized nation (besides South Africa) to not offer parental leave,<sup>40</sup> we are now the only industrialized nation to not offer paid maternity leave (South Africa does offer paid leave).<sup>41</sup> In 1993, Representative Louise Slaughter said, “When are we going to stop using this . . . argument that makes absolutely no sense to anybody in the rest of the world but some few people in the United States?”<sup>42</sup> when responding to those who argued that family leave would hurt business.<sup>43</sup> Representative

---

32. *See, e.g.*, 139 Cong. Rec. # (1993) (statements of Pres. Bill Clinton & Rep. Rush).

33. 139 Cong. Rec. # (1993) (statement of Rep. Barbara Kennelly).

34. 139 Cong. Rec. # (1993) (statement of Pres. Bill Clinton).

35. *Id.*

36. 139 Cong. Rec. # (1993) (statement of Rep. Barbara Kennelly).

37. 139 Cong. Rec. # (1993) (statement of Pres. Bill Clinton).

38. 139 Cong. Rec. # (1993) (statement of Rep. Barbara Kennelly).

39. *Id.*

40. 139 Cong. Rec. # (1993) (statement of Pres. Bill Clinton); 139 Cong. Rec. # (1993) (statements of Rep. Name Reed and Rep. Herb Klein).

41. Gretchen Livingston, *Among 41 Nations, U.S. is the Outlier When It Comes to Paid Parental Leave*, PEW RESEARCH CTR., Sept. 26, 2016, <http://www.pewresearch.org/fact-tank/2016/09/26/u-s-lacks-mandated-paid-parental-leave/>.

42. 139 Cong. Rec. # (1993) (statement of Rep. Louise Slaughter).

43. *Id.*

Lynn Woolsey went a step further, arguing that the FMLA would help produce an efficient and productive work force, which is necessary for the U.S. to compete in the global economy.<sup>44</sup>

Detractors argued that the FMLA would hurt employers, who would in turn reduce benefits, discriminate against women of child-bearing age, and hire only part time employees.<sup>45</sup> Supporters asserted the known falsity of such predictions. Instead, studies at the time showed that passing the FMLA would create more productive and long-term employees.<sup>46</sup> Rep. Woosley claimed, "Given a sense of job security, employees are more loyal, dependable, and productive."<sup>47</sup> Others noted that many of the businesses which already offered leave had reported results beneficial to employers.<sup>48</sup> Further, the Small Business Association (SBA) issued findings of their study of four states with mandatory leave indicating that providing workers with unpaid leave was cheaper than workers leaving to take care of children or other family members and employers having to hire replacements.<sup>49</sup> President Clinton listed the benefits of family leave: productivity in the workplace, lessened job turnover, job stability, efficiency, and reduced absenteeism, and decried the drawbacks of not offering family leave: A greater burden on all citizens to provide a wider safety net, social services, and medical care, as well as ignored health.<sup>50</sup> Further, supporters argued, parents returning to work before they should "may be more deleterious to productivity" because parents who return too soon "will not be fully productive or will make costly and needless mistakes."<sup>51</sup> The committee determined that family leave was cost effective for multiple reasons.<sup>52</sup>

Much of the anti-FMLA rhetoric centered around the argument that such legislation would hurt businesses (despite businesses in states that already had their own versions of the FMLA flourishing), but did not touch upon the benefit to families. Supporters argued, however, that the FMLA would strengthen family structures,<sup>53</sup> "enable families to receive preventative care and immediate treatment rather than neglect the problem

---

44. 139 Cong. Rec. # (1993) (statement of Rep. Lynn Woolsey).

45. *See, e.g.*, 139 Cong. Rec. # (1993) (statement of Jim Kolbe).

46. 139 Cong. Rec. # (1993) (statement of Rep. Glenn Poshard).

47. 139 Cong. Rec. # (1993) (statement of Rep. Lynn Woolsey).

48. *See, e.g.*, 139 Cong. Rec. # (1993) (statement of Rep. Eliot Engel).

49. 139 Cong. Rec. # (1993) (statement of Rep. Louise Slaughter).

50. 139 Cong. Rec. # (1993) (statement of Pres. Bill Clinton).

51. 139 Cong. Rec. # (1993).

52. 139 Cong. Rec. # (1993) ("family and medical leave is cost-effective in terms of reduced hiring and training costs, turnover and absenteeism"); 139 Cong. Rec. # (1993) (arguing that family and medical leave promotes loyalty and skillfulness among employees, improves morale, reduces turnover, and saves on costs for recruitment, hiring, and training); *Id.* (noting multiple studies which all concluded that family and medical leave saves companies money and strengthens families).

53. 139 Cong. Rec. # (1993) (statement of Rep. Bart Stupak).



until is worsens . . . costing us all more,”<sup>54</sup> contribute to family values,<sup>55</sup> and benefit mental and physical health of babies and children.<sup>56</sup> Congressional members cited the research of Dr. T. Berry Brazelton, Associate Professor of Pediatrics at Harvard Medical School. Dr. Brazelton recommended a minimum of four months for parents to be home bonding with newborns.<sup>57</sup> The Advisory Committee on Infant Care Leave of the Yale Bush Center in Child Development and Social Policy argued for a minimum of six months.<sup>58</sup> As will be discussed in more detail later in this article, “early nurturing and attachment enables the parent to instill in the infant a sense of confidence and of being an important person.”<sup>59</sup>

While much of the record focused on the importance of businesses and of infant care, many representatives also argued that parents should not have to choose between having careers and taking care of their children.<sup>60</sup> Yet, when analyzing motivations behind the passing of the FMLA, it is important to note the distinct lack of discussion of fathers entering the domestic sphere in a greater capacity than ever before. Stay-at-home fathers were not mentioned, perhaps because they were still relatively uncommon in 1993. Stranger still was the insistence on women entering the job market only out of necessity. It did not seem important to congressional members that women might actually *want* to have careers (as well as children).

In the next section, I introduce feminism as it applies to legal theory. Using Joan C. Williams's theory of reconstructive feminism, I argue that paid parental leave is beneficial to men, women, and children because of its unique theory of how gender and culture interact.

### C. FEMINISM AND THE LAW

The legal scholarship of Feminist Jurisprudence began during Second Wave Feminism in the 1960s,<sup>61</sup> though the term was not coined until 1978.<sup>62</sup> Like advocates of the Feminist Movement itself, advocates of Feminist Jurisprudence did not necessarily agree on the most effective way to achieve the end goal of equality for women. Traditionally, proponents

---

54. 139 Cong. Rec. # (1993) (statement of Rep. Joe Moakley).

55. 139 Cong. Rec. # (1993) (statement of Crain's New York Business); 139 Cong. Rec. # (1993) (statement of Rep. Bobby Rush).

56. *Infra* notes 57–59.

57. 139 Cong. Rec. # (1993) (statement of Rep.

58. 139 Cong. Rec. # (1993).

59. 139 Cong. Rec. # (1993).

60. *See, e.g.*, 139 Cong. Rec. # (1993) (statement of Rep. Thomas M. Barrett); 139 Cong. Rec. # (1993) (statement of Rep. Rep. Klein); 139 Cong. Rec. # (1993) (statement of Rep. Shepherd); 139 Cong. Rec. # (1993) (statement of Pres. Clinton).

61. *Feminist Jurisprudence*, CORNELL UNIV. L. SCH., [https://www.law.cornell.edu/wex/feminist\\_jurisprudence](https://www.law.cornell.edu/wex/feminist_jurisprudence).

62. Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY J. GENDER, L., & JUST. 191, 193 (1989).

were either “sameness” (also known as liberal) or “difference” feminists.<sup>63</sup> Sameness feminists believe that women and men should be seen and treated as equal before the law, whereas difference feminists believe that women’s differences from men should be celebrated.<sup>64</sup> Both schools of thought fail to capture important aspects of gender in society. Sameness feminists, born of the Second Wave, assert that women are the same as men and therefore should be allowed into the traditionally masculine sphere, but fail to focus on men entering the traditionally feminine sphere.<sup>65</sup> Difference feminists fail to take into account women who do exhibit more traditionally masculine traits and desires.<sup>66</sup>

In her article in the *Yale Journal of Law and Feminism*, Joan C. Williams introduces what she coins “reconstructive feminism.”<sup>67</sup> She states that the goal of reconstructive feminism “is to decouple gender from the key habits and conventions that impoverish many men and women—and brutalize anyone who cannot fit into that comfortable dichotomy; . . . to catalyze gender flux.”<sup>68</sup> Rather than focusing on the sameness of or differences between men and woman, reconstructive feminism asks why differences matter at all.<sup>69</sup> It differs from sameness feminism by accepting that there are physical difference between men and women, and from difference feminism by asserting that differences should not matter. It “shift[s] the focus from women’s bodies to social norms[.]”<sup>70</sup> This view of feminism allows for both women and men to benefit because social norms disadvantage both genders.<sup>71</sup> This disadvantage most clearly exists in how men and women are treated as workers and as parents. While women are treated as mothers first (facing disadvantages even when they choose not to have children) and employees second, men are treated as workers first and fathers second.<sup>72</sup> It is important to challenge social norms in order to offer more choices to both men and women when it comes to work and family life.

Feminists have long discussed the importance of paternity leave.<sup>73</sup> Paternity leave benefits the mother, the father, and the child. Men who are

---

63. Beth Bernstein, *Difference, Dominance, Differences: Feminist Theory, Equality, and the Law*, 5 BERKELEY J. GENDER, L., & JUST. 214, 218 (2013) (reviewing ZILLAH EISENSTEIN, *THE FEMALE BODY AND THE LAW* (1989)). Radical feminism will not be discussed in this note.

64. *Id.* at 218–19.

65. Joan C. Williams, *Reconstructive Feminism: Changing the Way We Talk About Gender and Work Thirty Years After the PDA*, 21 YALE J. L. & FEMINISM 79, 89–90 (2009).

66. *Id.* at 89–90.

67. *Id.*

68. *Id.* at 82.

69. *Id.* at 99–100.

70. *Id.* at 102.

71. *Id.* at 113.

72. James Poniewozik, *Paternity Leave and Why Men Need Feminism Too*, TIME, June 10, 2014.

73. See, e.g., Zillah Eisenstein, in Beth Bernstein, *supra* note 63, at 221.

able to take off work are available to help their postpartum partners, who will likely be tired and in pain from giving birth. Paternity leave also allows fathers and babies to bond early on. This is important, not only for fathers, but for children, because “[e]vidence indicates that [father-child interaction] is a key factor of children doing better in life on almost every indicator of success.”<sup>74</sup> And a father’s ability to take paternity leave can lead to more stable finances for the family, as the mother does not then have to “shortchange” her career.<sup>75</sup>

Most feminists agree that we live in a patriarchal society. “Although oppression of women is not the point of patriarchy, a social system that is male-identified, male-controlled, male-centered will inevitably value masculinity and masculine traits over femininity and feminine traits.”<sup>76</sup> This does not mean that men always have the advantage—rather that *masculinity* is valued over femininity. So, when men exhibit traits or desires considered traditionally feminine (like caring for children), they often find themselves at a disadvantage.<sup>77</sup> Williams’s reconstructive feminism provides the path to a solution for such a system by decoupling femininity and masculinity from women and men.

### III. THE POLICY FAILURE IN MEETING MODERN DEMANDS OF PARENTS AND WORKERS

#### A. MEN AS PARENTS

Imagine being a new parent and being told that you won’t actually get to take time off to be with your newborn unless you’re willing (and able) to take the time unpaid. Consider this example in which a father filed a complaint against Time Warner (TW).<sup>78</sup> TW allowed adoptive parents and biological mothers ten weeks of paid leave, but biological fathers could only take two weeks of paid leave.<sup>79</sup> When he fought the company and pointed out blatant discrimination, TW still denied him leave and gave no justification for its decision.<sup>80</sup> Or consider another example. A gay father asked for the company-permitted forty day paid paternity leave after the birth of his daughter.<sup>81</sup> After being granted leave, paid paternity leave was

---

74. INT’L LABOUR ORG., MATERNITY AND PATERNITY AT WORK: LAW AND PRACTICE ACROSS THE WORLD 52 (2014).

75. Poniewozik, *supra* note 72.

76. Mary Becker, *Patriarchy and Inequality: Towards a Substantive Feminism*, UNIV. CHICAGO LEGAL FORUM 24–25.

77. *Id.* at 25.

78. Josh Levs, *Why I’ve Filed an EEOC Charge Against Time Warner*, LEVSNEWS (Oct. 30, 2013).

79. *Id.*

80. *Id.*

81. Rich Calder, *Man Sues Employer for Alleged Firing Over Paternity Leave*, N.Y. POST, Apr. 23, 2014, <http://nypost.com/2014/04/23/man-sues-employer-for-alleged-firing-over-paternity-leave/> (last visited Mar. 27, 2016).

removed from company policy, he was let go, and someone else was hired to replace him.<sup>82</sup>

Over the last fifteen years, the number of fathers who take care of children full time has doubled.<sup>83</sup> “[T]he main driver for the growth is the increase in men staying home by choice, not because of unemployment or injury.”<sup>84</sup> About sixteen percent of stay-at-home parents are now fathers.<sup>85</sup> Forty-eight percent of dads surveyed by the Pew Research Center said that they would prefer to be at home taking care of children to working outside the home.<sup>86</sup> Millennial men, born in the 1980s and early 1990s<sup>87</sup> and now at child-rearing age, are much more interested in being stay-at-home fathers than men in previous generations were.<sup>88</sup>

While there has been a huge generational shift in how men view parenting, the same cannot be said for the law or employers. Not only does the United States deviate from the norm of other developed nations when it comes to parental leave, but the U.S. is the only developed nation that does not offer paid maternity leave.<sup>89</sup> Americans work more hours, on average, than many Europeans.<sup>90</sup> This makes finding time for children even harder on parents.

Though the FMLA allows for twelve weeks of unpaid leave, many employees are not eligible, and many fathers will not take unpaid leave for a variety of reasons. Aside from the financial burden, some reasons cited by fathers for not taking paternity leave are: stigma, disapproval by peers

---

82. Calder, *supra* note 81. The company told him that his job had been changed to part time and hired a part time worker. Within months, the job was changed back to full time and the new worker effectively had his job. *Id.*

83. Claire Cain Miller, *More Fathers Who Stay at Home by Choice*, N.Y. TIMES, June 5, 2014 [hereinafter *Home by Choice*].

84. *Id.* Jennifer Ludden, *Stay-At-Home Dads On the Rise, and Many of Them are Poor*, N.P.R., June 4, 2014.

85. *Stay-at-Home Dads Putting Kids Before Careers*, CBS NEWS, Feb. 10, 2015, <http://www.cbsnews.com/news/stay-at-home-fathers-find-support-in-national-at-home-dad-network/> (last visited Mar. 27, 2016).

86. *The Stay-at-Home Dad Revolution (The Dadolution?)*, MILLENNIAL PERS. FIN., Oct. 4, 2014, <http://www.millennialpersonalfinance.com/millennials-and-stay-at-home-dads/> (last visited Mar. 27, 2016).

87. *The Millennials are Coming*, CBS NEWS (Nov. 11, 2007) (last updated May 23, 2008), <http://www.cbsnews.com/news/the-millennials-are-coming/> (Millennials were born between 1980 and 1995.).

88. *The Stay-at-Home Dad Revolution (The Dadolution?)*, *supra* note 86; Anne VanderMey, *Anne-Marie Slaughter: “Let’s Celebrate” Dads Who Stay at Home*, FORTUNE, Oct. 14, 2015, <http://fortune.com/2015/10/14/anne-marie-slaughter-lets-celebrate-dads-who-stay-at-home/>.

89. COUNCIL OF ECON. ADVISORS, *supra* note 2, at 3.

90. The average American works about 1,700 hours per year; the average French person works less than 1,500 per year; and the average German works about 1,400 hours per year. John Weisenthal, *Check Out How Much the Average American Works Each Year Compared to the French, the Germans, and the Koreans*, BUS. INSIDER, Aug. 17, 2013, <http://www.businessinsider.com/average-annual-hours-worked-for-americans-vs-the-rest-of-the-world-2013-8> (last visited Mar. 27, 2016).

and employers, pressure to stay at work by employers, guilt, fear of being laid off, and fear of not looking committed to the job.<sup>91</sup> What's frightening is that they're not wrong. Men are harshly judged when taking paternity leave.<sup>92</sup>

In her article in the *Duke Journal of Gender Law and Policy*, Kelli K. Garcia describes society's view of men as "inauthentic caregivers" (the complement being women as "inauthentic workers").<sup>93</sup> She writes,

Expecting full-time, uninterrupted work from men assumes that they have a free-flow of domestic support (i.e., a housewife), which has the effect of policing men into an outdated, stereotypical gender role. When men break from this expectation and are penalized at work—for example, retaliated against for taking family and medical leave—they too experience unlawful gender discrimination.<sup>94</sup>

With such prevalent discrimination based on the view that men are breadwinners first and caregivers only second, it's not surprising that many men are afraid to take leave, even when offered. Further, "[e]mployers may be reluctant to hire or promote women because they expect women to take time off to care for the family, but they are also more resistant to offering men any form of accommodation for family responsibilities."<sup>95</sup> In other words, the ultimate consequence of the current societal view of gender roles results in women finding difficulty in being hired or promoted, and men facing difficulty in acting in their role as fathers. This view relegates women to one role and men to another, regardless of their actual desires as human beings or the needs of infants.

#### B. WOMEN AS WORKERS

Women face different issues than men, of course. At times it seems like women are criticized no matter their decision regarding maternity leave. For example, former Fox News and now NBC News anchor Megyn Kelly's three month paid maternity leave was called "a racket" by a male commentator.<sup>96</sup> Yet Yahoo CEO Marissa Mayer's choice to take only two weeks maternity leave was also criticized as sending a negative message to

---

91. See, e.g., Jason Hall, *Why Men Don't Take Paternity Leave*, FORBES, June 14, 2013; Josh Levs, *supra* note 78.

92. Kelli K. Garcia, *The Gender Bind: Men as Inauthentic Caregivers*, 20 DUKE J. GENDER L. & POL'Y 1, 10 (2012) ("men who want to participate fully in family life face discrimination in the workplace, including the denial of leave and potentially greater harm to their careers than woman in the same position").

93. *Id.* at 3–4.

94. *Id.* at 3.

95. *Id.* at 7–8.

96. Jim Rutenberg, *The Megyn Moment*, N.Y. TIMES, Jan. 25, 2015 at MM28.

other mothers in the tech industry.<sup>97</sup> At the same time, many women report disapproval when they choose not to have children at all.<sup>98</sup> So what is the right decision for women? Take more than two weeks off and less than three months off? What about young women in interviews who know that employers expect them to take leave while not expecting their male colleagues to do the same?

Although the FMLA was designed, in part, to combat gender discrimination in the workplace,<sup>99</sup> it has fallen short. Unlike men, women must take at least some leave after giving birth for physical reasons. Women who have cesarean sections (which account for about 33.5 percent of deliveries)<sup>100</sup> require even more physical recovery time than women who have uncomplicated vaginal deliveries.<sup>101</sup> Women who give birth via vaginal delivery remain in the hospital for at least twenty-four hours, and the postpartum body undergoes major changes for two to six weeks following delivery.<sup>102</sup> About ninety-four percent of childbirth hospital stays involved at least one complication in 2009.<sup>103</sup> Women who choose to breastfeed also need time with the baby to establish breastfeeding.<sup>104</sup> These realities are often used as justification for mothers staying home while fathers continue working.

But why is it that a woman's physical need to recover postpartum is considered different from the norm as far as workers go? Williams argues that "what we see as 'real physical . . . differences' seem 'real' and 'important' only by reference to unstated masculine norms that make women's differences seem to carry weighty explanatory power."<sup>105</sup> Consider a world where women are the primary breadwinners and men stay home with children. In such a world, it would be considered normal and commonplace to take maternity leave because maternity leave would be

---

97. Mel Robbins, *Back Off on Marissa Mayer's Maternity Leave*, CNN, Sept. 3, 2015, <http://www.cnn.com/2015/09/02/opinions/robbins-marissa-mayer/> (last visited Mar. 27, 2016).

98. See, e.g., Ellen Walker, *The Rift Between Parents and Childfree Adults*, PSYCHOLOGY TODAY, Apr. 28, 2014, <https://www.psychologytoday.com/blog/complete-without-kids/201404/the-rift-between-parents-and-childfree-adults> (last visited Mar. 27, 2016) (parenthetical).

99. Garcia, *supra* note 92, at 5–6.

100. Elizabeth Stranges, Lauren M. Wier, & Anne Elixhauser, *Complicating Conditions of Vaginal Deliveries and Cesarean Sections, 2009*, HEALTHCARE COST AND UTILIZATION PROJECT, AGENCY FOR HEALTHCARE RESEARCH AND QUALITY (2012), <https://www.hcup-us.ahrq.gov/reports/statbriefs/sb131.pdf> (last visited Mar. 27, 2016).

101. *Cesarean Section*, NAT'L INST. FOR HEALTH, <https://www.nlm.nih.gov/medlineplus/cesareansection.html> (last visited Mar. 27, 2016).

102. Mattea Romano et al., *Postpartum Period: Three Distinct but Continuous Phases*, 4 J. PRENATAL MEDICINE 22, (2010).

103. Stranges, *supra* note 100.

104. *Breastfeed Your Baby*, Healthfinder.gov, <http://healthfinder.gov/HealthTopics/Category/pregnancy/getting-ready-for-your-baby/breastfeed-your-baby> (last visited Mar. 27, 2016).

105. Williams, *supra* note 65, at 116.

required for physical reasons. If, in this world, men comprised a small minority of the workforce, a man's choice not to take paternity leave would be different from the female majority and considered strange or going against the norm. Now, returning to our world where men have historically made up the majority of the workforce, the physical needs of childbirth are considered a deviation from the norm, and often as a negative. Why hire or promote a woman who will likely take time off for childbirth when an employer can hire or promote a man who has no physical need to take time off?

Of course, potential employers are not allowed to ask women about their marital or parental status in interviews.<sup>106</sup> But women report being asked these questions frequently. And many employers who are savvy enough to avoid asking directly look for clues to answer these questions. A quick Google search using the terms women, wear a ring, interviews, and lawyers reveals a plethora of articles and blog posts about the dangers of women wearing engagement or wedding bands.<sup>107</sup> Many women understand that wearing an engagement ring or wedding band signifies to interviewers that they are simply "biding their time" before quitting to have babies, and have therefore been warned to remove such bands for interviews.<sup>108</sup> Unfortunately, while some interviewers see a woman's engagement ring as a warning that she will quit in a few years to raise children, they do not seem to take into account that many women marry and do not have children, others already have children and are done procreating, and many women continue working after having children. So, mothers, future mothers, and childfree women are all blanket judged and suffer as a result.

The current social structure is then bad for women without children, women who hope to have children, women who do have children, and men who hope to or do have children. In fact, the lack of paid leave is "an important reason why women's participation in the workforce has stalled in the U.S. and now lags many other developed nations."<sup>109</sup> "Employers may be reluctant to hire or promote women because they expect women to take time off to care for the family, but they are also more resistant to offering

---

106. 42 U.S.C. 2000e (2012).

107. *Google Search: Women Don't Wear Ring for Interviews Lawyers*, <https://www.google.com/search?q=don%27t+wear+ring+for+interviews+lawyers&ie=utf-8&oe=utf-8#q=women+don%27t+wear+ring+for+interviews+lawyers> (last visited May 5, 2016).

108. *See, e.g., Don't Wear a Wedding Ring and Other Ludicrous (but Necessary) Advice, But I Did Everything Right*, (Aug. 19, 2010), <http://butidideverythingrightorsoithought.blogspot.com/2010/08/dont-wear-wedding-ring-and-other.html>; *So What Exactly Should Female Attorneys Wear?*, *Feministe*, (Apr. 12, 2010), <http://www.feministe.us/blog/archives/2010/04/12/so-what-exactly-should-female-attorneys-wear/>; *Diamond Rings and the Working Girl*, *CORPORETTE*, (Mar. 17, 2011) <http://corporette.com/2011/03/17/diamond-rings-and-the-working-girl/> (discussing the downfalls to women wearing engagement rings).

109. COUNCIL OF ECON. ADVISORS, *supra* note 2, at 22.

men any form of accommodation for family responsibilities.”<sup>110</sup> So does that mean that women and fathers lose but employers win? Not really.

### C. EMPLOYERS AND CHILDREN

Allowing mothers and fathers leave improves “recruitment, retention, and employee motivation,” resulting in increased productivity.<sup>111</sup> Further, the majority of workers feel that they could do a better job if “allowed a more flexible schedule.”<sup>112</sup> In fact, research in the U.S., Britain, and Japan indicates that women are more likely to return to work if permitted paid leave after childbirth.<sup>113</sup> The president’s Council of Economic Advisors found that “paid leave contributes to higher labor force participation and a stronger economy,” and describes paid leave as a “positive return on investment.”<sup>114</sup> This research indicates that paid leave would be like an investment with a positive return. And how about those without a say—babies and children?

Babies benefit from one or both parents staying home. Children often have shorter hospital stays when their parents are home and caring for them.<sup>115</sup> The health benefits of breastfeeding are well-documented,<sup>116</sup> and establishing breastfeeding generally requires the mother’s round-the-clock presence, as bottle-feeding pumped milk can interrupt the baby’s ability to latch onto the breast.<sup>117</sup> Breastfeeding does not exclusively revolve around the mother—studies have indicated that “paternal influences on maternal feeding practices are critically important in early decision making about breastfeeding.”<sup>118</sup> Further, longer paternity leave increases the chance that a mother will breastfeed.<sup>119</sup> Recall as well the extreme importance of father-child interactions.<sup>120</sup> Most notably, “[t]he lack of access to arrangements that help parents care for children while maintaining a connection to the labor force may ultimately have a negative effect on the health and education of children with low-income working parents, as well

---

110. Garcia, *supra* note 92, at 7–8.

111. COUNCIL OF ECON. ADVISORS, *supra* note 2, at 2.

112. *Id.* at 7.

113. *Id.*

114. *Id.* at 8, 18.

115. *Id.* at 8.

116. See, e.g., *The Importance of Breastfeeding*, Nat’l Ctr. for Biotechnology Info., <http://www.ncbi.nlm.nih.gov/books/NBK52687/> (last visited May 5, 2016).

117. *Id.*

118. *Barriers to Breastfeeding in the United States*, Nat’l Ctr. for Biotechnology Info., <http://www.ncbi.nlm.nih.gov/books/NBK52688/> (last visited May 5, 2016).

119. *Maternity and Paternity at Work: Law and Practice Across the World*, Int’l. Labour Org. 62 (2014) (“Since partner presence and support have an important influence on a mother’s decision to breastfeed, the high levels of take-up among men of long and flexible leave schemes also seems related to the significant rates of breastfeeding in Sweden and Iceland.”).

120. *Id.*



as increase the cost of social services.”<sup>121</sup> Couple that with the fact that access to paid leave is even lower among Hispanics,<sup>122</sup> and a sexist social structure takes on racial overtones, becoming an intersectional issue.

Interactions between parent and child set the stage for successful (or unsuccessful) relationships in the future.<sup>123</sup> “Early parent-child relationships have powerful effects on children’s emotional well-being, their basic coping and problem-solving abilities, and future capacity for relationships.”<sup>124</sup> Father-infant interaction decreases the chances of behavioral problems in boys, emotional problems in girls, and delinquency in both.<sup>125</sup> Father-infant interaction leads to children with higher IQs and more academic success.<sup>126</sup> Lack of father-child interaction increases the chances of poor outcomes, such as: diminished self-concept, behavioral problems, truancy, youth crime, poor academic performance, teen pregnancy, drug and alcohol abuse, physical and mental health issues, and higher likelihood of divorce, unemployment, and child mortality.<sup>127</sup>

Of course, mother-infant interaction is also important. Mother-infant bonding can be a factor in determining the quality of future romantic relationships.<sup>128</sup> Interruption in mother-infant bonding can lead to aggression, depression, and emotional detachment in adults.<sup>129</sup>

Babies develop their sense of trust by six to nine months of age, so those first months are excruciatingly important for parent-infant interaction.<sup>130</sup> Considering the plethora of research indicating the extreme importance of father-infant and mother-infant interaction, the twelve weeks

---

121. COUNCIL OF ECON. ADVISORS, *supra* note 2 at 13.

122. *Id.* at 2(?)

123. Mary Beth Steinfield, *Bonding is Essential for Normal Infant Development*, Univ. of Calif. Davis Med. Ctr., [http://www.ucdmc.ucdavis.edu/medicalcenter/healthtips/20100114\\_infant-bonding.html](http://www.ucdmc.ucdavis.edu/medicalcenter/healthtips/20100114_infant-bonding.html) (last visited May 5, 2016).

124. *Positive Parent-Child Relationships*, Nat’l. Ctr. on Parent, Family, & Comm. Engagement, <http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/family/docs/parent-child-relationships.pdf> (internal citations omitted) (last visited May 5, 2016).

125. Paul G. Ramchandani et al., *Do Early Father-Infant Interactions Predict the Onset of Externalising Behaviours in Young Children? Findings From a Longitudinal Cohort Study*, 45 J. CHILD PSYCHOLOGY & PSYCHIATRY 56, 57 (2013), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3562489/pdf/jcpp0054-0056.pdf>.

126. Jeffrey Rosenberg & W. Bradford Wilcox, *The Importance of Fathers in the Healthy Development of Children*, Child Abuse and Neglect User Manual Series 12 (2006), <http://www.childwelfare.gov/pubPDFs/fatherhood.pdf>.

127. Edward Kruk, *Father Absence, Father Deficit, Father Hunger: The Vital Importance of Paternal Presence in Children’s Lives*, Psychology Today (May 23, 2012), <https://www.psychologytoday.com/blog/co-parenting-after-divorce/201205/father-absence-father-deficit-father-hunger>.

128. Maureen Salamon, *Baby-Mother Bonds Affect Future Adult Relationships, Study Finds*, LIVE SCIENCE (Dec. 20, 2011), <http://www.livescience.com/17573-baby-mother-bonds-affect-future-adult-relationships-study-finds.html>.

129. Miriam R. Spinner, *Maternal-Infant Bonding*, 24 CAN. FAM. PHYSICIAN 1151, 1151 (1976), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2379718/pdf/canfamphys00296-0067.pdf>.

130. *Id.*

of unpaid leave available to only sixty percent of parents, of which fathers rarely take more than a couple of days, suddenly seems egregiously insufficient.

#### IV. A SIX-PART COMPENSATION PACKAGE

In this Part I chart international models of paid parental leave in order to assess which types of compensation packages are working and how. I also provide some cultural background to assist in understanding why the data is as it is. Like regions are grouped together—Scandinavia, the rest of western Europe, and eastern Europe are each in their own subsection—in order to show how cultural backgrounds interact with offered compensation packages.

Next, I examine the three U.S. states that offer paid leave—Rhode Island, New Jersey, and California. These three states provide an interesting comparison to countries with generous paid leave packages because of their likenesses in culture and in effects.

After exploring international and domestic models for paid leave, I look at two proposed bills in support of paid leave. I conclude that neither of these bills will lead to as high of uptake levels in the U.S. as in Scandinavia.

Finally, in this part I detail my own proposal. I propose a father quota, lengthier leave time for mothers and fathers, a payroll tax, and an employer tax and credit. These solutions are based on policies which have proven effective in nations and states that offer paid leave.

##### A. INTERNATIONAL MODELS

As previously noted, the United States is the only developed nation that does not offer paid maternity leave.<sup>131</sup> Out of the nations that provide paternity leave, ninety percent of them offer paid leave.<sup>132</sup> Many countries pay one hundred percent of the father's normal salary, with others paying between a low flat rate and ninety percent.<sup>133</sup> Leave is paid for by both employers and social security, with social security being the more prevalent payer in in the Developed Economies.<sup>134</sup>

In the following subsections, I will separately explore Scandinavia, other parts of Western Europe, and Eastern Europe. I will also include a brief discussion of the leave offered in South America, Asia, and Africa.

I assigned grades to countries' paid paternity leave packages. Figures 1 and 2 show a correlation between compensation packages and uptake levels. Grades were assigned based on number of paid leave days for fathers and percent of salary paid during leave. I assigned each country a

---

131. COUNCIL OF ECON. ADVISORS, *supra* note 2 at 3

132. Int'l Labour Org., *supra* note 74, at 57

133. *Id.*

134. *Id.*

number between one and four for both measures, and then took the average of the two numbers in order to give an overall grade. Table 1 shows the scale I used.

Paid Days	Grade	% of Salary Paid
90+	4 / A	90-100%
60-89	3 / B	70-89%
30-59	2 / C	50-69%
1-29	1 / D	1-49%

TABLE 1

Notably, some countries offer a flat rate of pay rather than a percentage of salary. In those cases, a grade for percentage of salary paid was based on the percent of median income less income taxes that the flat rate pay accounted for. For example, New Zealand offers \$200.00 per week. The median weekly salary in New Zealand is \$863.00,<sup>135</sup> which is about \$45,000.00 per year. Applying the effective tax rate on a \$45,000.00 salary deducts \$6,895.00 for the year,<sup>136</sup> or \$132.60 per week, leaving \$730.40 per week. The flat rate (\$200.00) divided by this median weekly pay comes out to about twenty-seven percent. Of course, this salary percentage only applies to those who make the median income. But for New Zealand to receive a higher score for the percentage paid measure, a man would have to make less than \$21,000.00 per year.

It is also important to note that some countries pay a percentage of salary up to a ceiling. For example, Finland offers the pay scheme shown in Table 2:

First 30 Days	75% of annual earnings up to \$61,929.00, and 32.5% for earnings above this level.
After First 30 Days	70% of earnings up to \$40,060, 40% between \$40,060 and \$61,929, and 25% of earnings above \$61,929.00.

TABLE 2

Finland also provides a floor of \$26.42 per day.<sup>137</sup> The median income for full-time employees in Finland is about \$38,648.00,<sup>138</sup> so the

135. *New Zealand Income Survey: June 2014 Quarter*, Statistics New Zealand (Oct. 3, 2014), [http://www.stats.govt.nz/browse\\_for\\_stats/income-and-work/Income/NZIncomeSurvey\\_HOTPJun14qtr.aspx](http://www.stats.govt.nz/browse_for_stats/income-and-work/Income/NZIncomeSurvey_HOTPJun14qtr.aspx).

136. *Tax on Annual Income Calculator*, Inland Revenue, <http://www.ird.govt.nz/calculators/keyword/incometax/calculator-tax-rate.html> (last visited May 16, 2016).

137. *Id.*

\$61,929.00 ceiling is actually pretty high and the post-30 day \$40,060.00 ceiling is at least reasonable.

### 1. Scandinavia

Country	Days of Paid Leave	% of Leave Paid	% that Take Leave	Grade
Denmark	14 days + 32 weeks	100%	90% take more than 2 weeks	4 - A
Finland	54 days + 26 weeks	70-90%	83%	3.5 - B+
Iceland	150 days + 60 days	80%	90%	4 - A
Norway	46 weeks 56 weeks	100% 80%	90%	4 - A
Sweden	90 + 390	90%	90%	4 - A

TABLE 3<sup>139</sup>

Countries in Scandinavia offer the most generous paternity leave packages. Table 1 shows a correlation between highly graded paternity leave packages and take-up of leave. While Finland does have a high take-up rate, it is not quite as high as the country's Scandinavian neighbors.

138. *Finnish Perceptions of Income Revealed*, Helsinki Times (Jan. 20, 2015), <http://www.helsinkitimes.fi/finland/finland-news/domestic/13149-finnish-perceptions-of-income-revealed.html>.

139. *Denmark: Creating Proactive Policies Supporting Vulnerable Children and Their Families*, EURO. UNION, [http://europa.eu/epic/countries/denmark/index\\_en.htm](http://europa.eu/epic/countries/denmark/index_en.htm) (May 10, 2016); *Parental Leave and Maternity Benefits*, ANGLOINFO: DENMARK, <http://denmark.angloinfo.com/healthcare/pregnancy-birth/leave-benefits/> (last visited May 10, 2016); *The Benefits of Paternity Leave*, THE ECONOMIST (May 14, 2015), <http://www.economist.com/blogs/economist-explains/2015/05/economist-explains-18>; *Finland: Universal Services and Financial Benefits to Promote the Well-Being of All Children and Families*, EURO. UNION, [http://europa.eu/epic/countries/finland/index\\_en.htm](http://europa.eu/epic/countries/finland/index_en.htm) (last visited May 10, 2016); *Finland: Family Leave Policies*, TULAND.EDU, <http://www.tulane.edu/~rouxbee/soci626/finland/familyleave.html> (last visited May 10, 2016); Minna Salmi & Johanna Lammi-Taskula, *Policy Goals and Obstacles for Fathers' Parental Leave in Finland*, NAT'L INST. FOR HEALTH AND WELFARE (2015), [http://www.leavenetwork.org/fileadmin/Leavenetwork/Seminars/2015/Salmi\\_LP\\_R\\_2015\\_book\\_presentation.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Seminars/2015/Salmi_LP_R_2015_book_presentation.pdf); Guðný Björk & Ingólfur V. Gíslason, *Iceland 2012: Revised Law on Paid Parental Leave*, Univ. of Iceland, [http://thjodmalastofnun.hi.is/sites/thjodmalastofnun.hi.is/files/skrar/eydal\\_and\\_gislason-paid\\_parental\\_leave\\_in\\_iceland-2012\\_developmen\\_ts-1.pdf](http://thjodmalastofnun.hi.is/sites/thjodmalastofnun.hi.is/files/skrar/eydal_and_gislason-paid_parental_leave_in_iceland-2012_developmen_ts-1.pdf); Christa Clapp, *The Smart Economics of Norway's Parental Leave, and Why the U.S. Should Consider It*, WASH. POST (Jan. 11) <https://www.washingtonpost.com/news/parenting/wp/2016/01/11/the-smart-economics-of-norways-parental-leave/>; Anne Chemin, *Norway, the Fatherland*, THE GUARDIAN (July 19, 2011), <http://www.theguardian.com/money/2011/jul/19/norway-dads-paternity-leave-chemin> <https://sweden.se/quickfact/parental-leave/>; *Why Swedish Men Take So Much Paternity Leave*, THE ECONOMIST (July 22, 2014), <http://www.economist.com/blogs/economist-explains/2014/07/economist-explains-15>.

Norway, Sweden, and Iceland all have a so-called “daddy quota”<sup>140</sup> which is a period of parental leave that only the father can take—meaning it cannot be transferred to the mother, so if not taken, the time is forfeited.<sup>141</sup> In any event, the Scandinavian countries tend to have the best paternity leave packages as well as the highest levels of uptake.

To be sure, cultural issues also affect the prevalence of fathers taking leave. According to the World Economic Forum global gender gap rankings, the top five countries for gender equality are, in order: Iceland, Finland, Norway, Sweden, and Denmark.<sup>142</sup> Some other western European countries later explored in this part are ranked as follows: Spain (29), New Zealand (13), United Kingdom (26), and France (16).<sup>143</sup> Of these countries, Spain and the U.K. are the only two ranked lower than the U.S., which is twentieth.<sup>144</sup> The U.S. is also ranked below Nicaragua, Rwanda, Philippines, Latvia, Burundi, and South Africa.<sup>145</sup>

So what are the Scandinavian countries doing to contribute to high levels of gender equality? Norway’s approach is a recall to Williams’s article. “The problem has often been the perception that gender neutrality promotes gender equality. In fact gender neutrality—intentionally or unintentionally—generates inequality because men traditionally have been the norm for policy development and implementation.”<sup>146</sup>

The Swedish government employs a Minister for Gender Equality and “[g]ender equality is one of the cornerstones of Swedish society. The aim of Sweden’s gender equality policies is to ensure that women and men enjoy the same opportunities, rights and obligations in all areas of life.”<sup>147</sup>

The Icelandic Center for Gender Equality prides itself on a long history of movement towards improving equality between men and women. For example, Iceland first provided for equal inheritance rights in 1850, allowed three months maternity leave in 1975, elected the first

---

140. Andrew Mach & Rialda Zukic, *Father’s Day Off? Here’s How Paternity Leave Varies for Dads Across the Globe*, P.B.S. (June 21, 2015), <http://www.pbs.org/newshour/updates/fathers-day-heres-paternity-leave-varies-dads-around-globe/>.

141. Aamna Mohdin, *How Sweden’s “Daddy Quota” Parental Leave Helps with Equal Parenting*, QUARTZ (Jan. 6, 2015), <http://qz.com/587763/how-swedens-daddy-quota-parental-leave-helps-with-equal-parenting/>.

142. *Global Gender Gap Report 2014*, WORLD ECON. FORUM, <http://reports.weforum.org/global-gender-gap-report-2014/rankings/> (last visited May 11, 2016). Countries are ranked based on: economic participation and opportunity, educational attainment, health and survival, and political empowerment. *Id.* For example, see Norway’s score card. *Norway*, WORLD ECON. FORUM, <http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=NOR> (last visited May 11, 2016).

143. *Global Gender Gap Report 2014*, *supra* note 142.

144. *Id.*

145. *Id.*

146. *Gender Mainstreaming*, GENDER IN NORWAY, [http://www.gender.no/Policies\\_tools/1090](http://www.gender.no/Policies_tools/1090) (last visited May 11, 2016).

147. *Gender Equality in Sweden*, SWEDEN.SE, <https://sweden.se/society/gender-equality-in-sweden/> (last visited May 11, 2016).

democratically elected female head of state in 1980, and gave fathers three months non-transferrable paternity leave in 2003.<sup>148</sup>

According to the Ministry of Foreign Affairs of Denmark, “gender equality is a fundamental right that should not be subjected to cultural notions of women’s and men’s role.”<sup>149</sup>

The Finnish Council for Equality was founded in 1972.<sup>150</sup> The Finnish Minister for Social Affairs and Health is responsible for implementing strategies for gender equality.<sup>151</sup> Further, “All ministries must ensure that the agencies in their administrative sectors give consideration to the gender perspective. The experts in each administrative sector learn to recognize and take into account gender equality issues relevant to their own fields when doing preparatory work.”<sup>152</sup> The Finnish government also strives for equality for men by encouraging men to take parental leave.<sup>153</sup>

But the Scandinavian countries aren’t perfect, even when it comes to parental leave. Without quotas, men often take little more than their allotment. For example, although Denmark provides two weeks for fathers and thirty-two weeks to be split, women take by far more of the thirty-two weeks than men.<sup>154</sup> As Iceland has continued to lower its cap on parental leave pay, fewer men have been financially able to take an extended leave time, reducing them to “mother’s assistants” instead of co-primary caregivers.<sup>155</sup> In Norway, the law originally allowed parents to split up 180 days as they saw fit.<sup>156</sup> Fathers only took 0.5 percent of all parental leave.<sup>157</sup> In 2014, they took a quarter of it.<sup>158</sup> This enormous jump is positive, but still indicates further factors exist in determining how much time fathers take versus how much time mothers take.

## B. EFFECTS

---

148. Jafnréttisstofa, *Gender Equality in Iceland*, Ctr. for Gender Equality Iceland (2012), <https://www.velferdarraduneyti.is/media/rit-og-skyrslur2012/Gender-Equality-in-Iceland.pdf>.

149. *Gender Equality*, Ministry of Foreign Affairs of Denmark, <http://um.dk/en/danida-en/activities/strategic/human-right-demo/gender/> (last visited May 11, 2016).

150. *Gender Equality Policies in Finland*, Ministry of Social Affairs and Health (2006), [http://www.mpsv.cz/files/clanky/16168/Gender\\_equality\\_policies\\_\\_FIN.pdf](http://www.mpsv.cz/files/clanky/16168/Gender_equality_policies__FIN.pdf).

151. *Id.* at 6–7.

152. *Id.* at 8.

153. *Id.* at 10.

154. Marie Preisler, *Denmark’s Gender Equality Policies: No Quotas and a Focus on Men*, NORDIC LABOUR J. (Mar. 8, 2013), <http://www.nordiclabourjournal.org/i-fokus/in-focus-2013/equality-reaching-critical-mass/article.2013-03-08.2356410784>.

155. Guðrún Helga Sigurðardóttir, *Iceland: Fewer Take Paternity Leave*, NORDIC LABOUR J. (Dec. 8, 2014), <http://www.nordiclabourjournal.org/nyheter/news-2014/article.2014-11-27.4319266250>.

156. *Why Swedish Men Take So Much Paternity Leave*, THE ECONOMIST (July 22, 2014), <http://www.economist.com/blogs/economist-explains/2014/07/economist-explains-15>.

157. *Id.*

158. *Id.*

The effects of paid paternity leave in Scandinavia have been overall positive. As shown, significantly more fathers in Scandinavia than in the U.S. take time to bond with their newborns. In Sweden, women have reported an increase in income levels and happiness.<sup>159</sup> Men have reported higher levels of satisfaction with the amount of time they are able to spend with children.<sup>160</sup>

Higher levels of paternity leave taken also correlate with greater participation by women in the workforce.<sup>161</sup> In Finland, paid leave has “facilitated the access of women to the labour market.”<sup>162</sup> In the European Union, Denmark has the highest level of workforce participation and employment, particularly among women.<sup>163</sup> Though Denmark does have a gender pay gap, it is lower than in the U.S.<sup>164</sup>

Since the 1993 reforms, Norwegian children of educated fathers who take leave have shown an increase in exam scores.<sup>165</sup> Swedish fathers who took paternity leave in the late 1970s had a sixteen percent decreased death risk by 2001.<sup>166</sup>

The Scandinavian countries are not immune to cultural gender inequality. In each of these countries, men take less overall leave than women. A gender pay gap exists in each country as well due to female-dominated fields paying less than male-dominated fields. However, these countries have made serious strides towards gender equality. In 2014, Sweden's foreign minister, Margot Wallström “announced that she intended to pursue a feminist foreign policy[.]”<sup>167</sup> In Sweden and Norway, the political party called “Feminist Initiative” has gained popularity in recent years, and the party is setting up in Denmark and Finland.<sup>168</sup> Iceland has been called the most feminist country in the world<sup>169</sup> ever since the

159. THE ECONOMIST, *supra* note 156.

160. Scott Coltrane, *The Risky Business of Paternity Leave*, THE ATLANTIC (Dec. 29, 2013), <http://www.theatlantic.com/business/archive/2013/12/the-risky-business-of-paternity-leave/282688/>.

161. U.S. Dep't of Labor, DOL Policy Brief: Paternity Leave: Why Parental Leave for Fathers is So Important for Working Families 3, <http://www.dol.gov/asp/policy-development/PaternityBrief.pdf>.

162. The Parental Leave System in Iceland, Organisation of Exchange of Good Practices on Gender Equality 75 (2008).

163. *Id.* at 55.

164. *Id.* at 56.

165. Sara Cools, Jon H. Fiva, & Lars J. Kirkeb  en, *Causal Effects of Paternity Leave on Children and Parents* 21, <http://www.jon.fiva.no/docs/CoolsFivaKirkeboen.pdf>.

166. Coltrane, *supra* note 160.

167. Jenny Nordberg, *Who's Afraid of a Feminist Foreign Policy?*, THE NEW YORKER (Apr. 15, 2015), <http://www.newyorker.com/news/news-desk/swedens-feminist-foreign-minister>.

168. Jasmine Coleman, *Feminist Initiative Shakes Up Politics in Sweden and Norway*, BBC NEWS (Apr. 9, 2015), <http://www.bbc.com/news/world-europe-32202434>.

169. Natasha Noman, *What Iceland Did to Become the Most Feminist Country in the World*, WORLD.MIC (Apr. 13, 2015), <http://mic.com/articles/114962/here-s-how-iceland-became-the-most-feminist-country-in-the-world#.bLNFhAh3g>.

famous day in 1975 when women in Iceland went on strike, refusing to work, cook, and look after children for one day.<sup>170</sup> It is difficult to imagine a feminist political party or a government agency which exists for the promotion of gender equality in the United States. Although the Scandinavian countries still have a ways to go, the pieces are in place for progression on that front.

## 2. Western Europe

Country	Days of Paid Leave	% of Leave Paid	% that Take Leave	Grade
France	11 days	100%	66.7%	2.5/C+
Germany	12 months split by both parents, 2 months reserved for father	65%	27.3%	2.5 - C+
New Zealand	14 days unpaid + mother can transfer 14 weeks paid	27%	4%	1 - F
Spain	30 days	100%	74%	3 - B
United Kingdom	2 weeks	12.6%	40%	1 - F

TABLE 4<sup>171</sup>

170. Kirstie Brewer, *The Day Iceland's Women Went on Strike*, BBC NEWS (Oct. 23, 2015), <http://www.bbc.com/news/magazine-34602822>.

171. *France: Significant Support for Women and High Monetary Benefits*, EUR. UNION, [http://europa.eu/epic/countries/france/index\\_en.htm](http://europa.eu/epic/countries/france/index_en.htm) (last visited May 10, 2016); *France: Parental Leave*, Tulane.edu, [http://www.tulane.edu/~rouxbee/soci626/france/parental\\_leave.htm](http://www.tulane.edu/~rouxbee/soci626/france/parental_leave.htm) (last visited May 10, 2016); Esther Geisler & Michaela Kreyenfeld, *How Policy Matters: Germany's Parental Leave Benefit Reform and Fathers' Behavior 1999-2009* 5 (Max-Planck Institute for Demographic Research WP 2012-012, 2012), <http://www.demogr.mpg.de/papers/working/wp-2012-021.pdf>; *Parental Leave*, EXPAT BABIES, <http://www.expatsbabies.com/frankfurt/need-to-know/parental-leave-payments/parental-leave/16647> (last visited May 10, 2016); *German Parental Leave – Your Guide*, THE LOCAL (Jan. 13, 2014), <http://www.thelocal.de/jobs/article/german-parental-leave-our-guide>; Sonja Kuch, *In Germany, Fathers Take Parental Leave More Often, Even Though for a Short Period of Time*, HENKEL (June 17, 2013), <http://www.henkeldiversity.com/2013/06/17/in-germany-fathers-take-parental-leave-more-often-even-though-for-a-short-period-of-time/>; *Parental Leave: Eligibility – Who Can Take It*, EMPLOYMENT NEW ZEALAND, <http://employment.govt.nz/er/holidaysandleave/parentalleave/partnersfathers/whatisavailable-pf.asp> (last visited May 10, 2016); Heather McDonald, *New Zealand, LEAVE NETWORK* (Apr. 2014), [http://www.leavenetwork.org/fileadmin/Leavenetwork/Country\\_notes/2014/New\\_Zealand.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Country_notes/2014/New_Zealand.pdf); Eloise Gibson, *Men Not Keen on Unpaid Paternity Leave*, STUFF, <http://www.stuff.co.nz/national/women-of-influence/8928326/Men-not-keen-on-unpaid-paternity-leave> (last updated July 17, 2013); *Parental Leave and Child Benefits in Spain*, ANGLOINFO: SPAIN, <http://spain.angloinfo.com/healthcare/pregnancy-birth/parental-leave-benefits/> (last visited May 10, 2016); *Maternity and Paternity Leave in the EU*, Eurp. Parliament (Dec. 2014), [http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/545695/EPRS\\_ATA%282014%29545695\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/545695/EPRS_ATA%282014%29545695_REV1_EN.pdf); Anna Escobedo, Gerardo Meil, & Irene Lapuerta, *Spain*, LEAVE NETWORK (Apr. 2015), <http://www.leavenetwork.org/file>



The most notable piece of data here is that the countries with the highest uptake of paternity leave are those that pay at a one hundred percent rate. Still, it is important to dissect these findings a bit in order to understand the reasons for such low uptake.

In the U.K., the cap on parental leave earnings has stopped fathers from taking as much time off as they otherwise might.<sup>172</sup> Fewer than ten percent of fathers there take more than their statutory two weeks paternity leave.<sup>173</sup> Like men in the U.S., men in the U.K. are still "too embarrassed" to ask employers for parental leave.<sup>174</sup> Men in the U.K. are more likely to believe in traditional gender roles following the birth of their first child.<sup>175</sup> Only eight percent of single parents are fathers.<sup>176</sup> Most notably, in one study, "94% of male respondents either agreed or strongly agreed that many families cannot afford for fathers to take paternity leave unless it is at full pay."<sup>177</sup> Further, sixty-eight percent agreed that "men don't ask for paternity leave because they don't want to create problems at work."<sup>178</sup> Many fathers are not even aware of their statutory parental leave rights.<sup>179</sup>

Men in Germany are much more likely to take leave when they earn less than their partner.<sup>180</sup> A German study shows that men associate career barriers with taking parental leave.<sup>181</sup> It is important to note that while 80.4

---

admin/Leavenetwork/Country\_notes/2015/spain.pm.pdf; *Paternity Pay and Leave*, Gov.UK, <https://www.gov.uk/paternity-pay-leave/leave> (last visited May 10, 2016); Gabrielle Jackson, *Force Men to Take Paternity Leave. It Will Make the World a Better Place*, THE GUARDIAN (Apr. 9, 2015), <http://www.theguardian.com/commentisfree/2015/apr/10/want-better-dads-happier-mums-and-healthier-kids-make-men-take-paternity-leave>; *Working for Families: Tax Credits*, Inland Revenue, <http://www.ird.govt.nz/wff-tax-credits/understanding/all-about/ptc/> (last visited May 11, 2016).

172. *The Observer View on Working Fathers and Childcare*, THE GUARDIAN (June 20, 2015), <http://www.theguardian.com/commentisfree/2015/jun/21/observer-view-on-fathers>.

173. Matthew Jenkin, *Men Still Feel Too Embarrassed to Ask for Paternity Leave*, THE GUARDIAN (Oct. 2, 2015), <http://www.theguardian.com/sustainable-business/2015/oct/02/paternity-leave-men-fathers-embarrassed-to-ask-for-parental-leave>.

174. *Id.*

175. Emily Dugan, *Men Adopt "Traditional Views on Gender Roles" After Becoming a Father for First Time, Study Finds*, INDEPENDENT (July 26, 2015), <http://www.independent.co.uk/news/science/men-adopt-traditional-views-on-gender-roles-after-becoming-a-father-for-first-time-study-finds-10417100.html>.

176. Colin Shaw & Maria Lohan, *Understanding Fatherhood in the 21st Century*, MAN MATTERS 4 (Oct. 2012), <https://www.qub.ac.uk/sites/media/Media,358434,en.pdf>.

177. *Id.* at 6.

178. *Id.* at 6.

179. *Id.* at 6.

180. *Reactions Towards Men Who Have Taken Parental Leave: Does the Length of Parental Leave Matter?* 5, [https://www.psychologie.uni-heidelberg.de/ae/diff/gender/pdf-files/Fleischmann\\_Sieverding\\_Sex%20Roles%20%28online%20first%29%20Men%20who%20have%20taken%20parental%20leave.pdf](https://www.psychologie.uni-heidelberg.de/ae/diff/gender/pdf-files/Fleischmann_Sieverding_Sex%20Roles%20%28online%20first%29%20Men%20who%20have%20taken%20parental%20leave.pdf) (last visited May 11, 2016).

181. *Id.* at 6.

percent of German men work full time, only 43.7 percent of German women do.<sup>182</sup>

France and Spain, the countries with the highest uptake levels, present an interesting comparison. The economic activity of women aged 25-54 has increased three times more in France than in Spain.<sup>183</sup> France initially offered a flat rate parental leave benefit program to families with three or more children in 1985.<sup>184</sup> More women are also employed in France than in Spain.<sup>185</sup> In the event of divorce, French parents are more likely to share joint physical custody of children than Spanish parents.<sup>186</sup> Yet both countries have taken strides towards involving fathers more in children's lives. What this comparison shows is that, while cultural influences are certainly a factor, even in a less egalitarian culture men will take leave when offered at full pay.

In New Zealand, the country with the lowest uptake, a 2009 report showed that "[t]he most commonly stated barrier to being a better father was work commitments."<sup>187</sup> Nearly half of fathers studied felt that New Zealand society does not recognize the importance of fathers, and more than half felt that fathers were portrayed in a poor light by the media.<sup>188</sup> However, in the same study, only five percent said they were the "main carer" for their child(ren).<sup>189</sup> Twelve percent of fathers said they took primary responsibility for day-to-day childcare.<sup>190</sup> Nearly seventy percent said they would like to spend more time with their children.<sup>191</sup>

Western Europe almost looks like a transition spot between the U.S. and Scandinavia. Each country offers better leave than in the U.S., and all but New Zealand have higher paternity leave uptake rates, but cultural issues and lack of full salary during leave still stand in the way. Discussed in the next subsection, eastern Europe is most similar to western Europe.

### 3. Eastern Europe

Country	Days of Paid Leave	% of Leave Paid	% That Take Leave	Grade
Estonia	10	100%	38%	2.5 – C+

182. *Reactions Towards Men*, *supra* note 180, at 10.

183. Anna Escobedo, Lluís Flaquer, & Lara Navarro-Varas, *The Social Politics of Fatherhood in Spain and France: A Comparative Analysis of Parental Leave and Shared Residence*, 42 *ETHNOLOGIE FRANÇAISE* 117, 118 (2012), [https://www.cairn.info/load\\_pdf.php?download=1&ID\\_ARTICLE=ETHN\\_121\\_0117](https://www.cairn.info/load_pdf.php?download=1&ID_ARTICLE=ETHN_121_0117).

184. *Id.* at 119.

185. *Id.* at 121.

186. *Id.* at 123.

187. Families Comm'n, Supporting Kiki Dads: Role and Needs of New Zealand Fathers 12 (Dec. 2009), [http://www.superu.govt.nz/sites/default/files/supporting-kiwi-dads\\_0.pdf](http://www.superu.govt.nz/sites/default/files/supporting-kiwi-dads_0.pdf).

188. *Id.* at 12.

189. *Id.* at 52.

190. Families Comm'n, *supra* note 187, at 54.

191. *Id.*

<b>Slovenia</b>	90	100% first 15, flat rate after	78% 85%	3.75 – A-
<b>Bulgaria</b>	15	90%	31.4%	2.5 - C+
<b>Lithuania</b>	30	100%	1%	3 - B
<b>Poland</b>	14	100%	21%	2.5 – C+
<b>Czech Republic</b>	≤ 4 yrs	70% (only one parent receives at a time)	Data not available	Data not available
<b>Romania</b>	10	100%	Data not available	Data not available

TABLE 5<sup>192</sup>

Eastern European countries do not provide as much paid leave for fathers as Scandinavia, but countries like Slovenia and Lithuania offer more than some western European countries. Slovenia was the first country in the world to provide paid paternity leave in 1974.<sup>193</sup> It offered paid maternity leave in 1927.<sup>194</sup> Still, Slovenians tend to have more traditional ideas about gender roles, which may be a factor in why their uptake rate is lower than it might be considering the one hundred percent pay rate for the first fifteen days of paternity leave.<sup>195</sup> At the same time, Slovenia has a high rate of labor force participation among women as well as affordable childcare.<sup>196</sup>

In Poland, the traditional woman's role was as the household matriarch.<sup>197</sup> In modern Poland and Czech Republic, "the status quo is that child-care is the responsibility of mothers."<sup>198</sup> And while there are parental

192. Cynthia Allum, *The Countries with the Best Paid Paternity Leave for Dads*, N.Y. TIMES (June 19, 2015), <http://nytlive.nytimes.com/womenintheworld/2015/06/19/the-countries-with-the-best-paid-paternity-leave-for-dads/>; Brad Harrington et al., *The New Dad: Take Your Leave*, Boston Coll. Ctr. for Work & Family, (2014), [http://www.thenewdad.org/yahoo\\_site\\_admin/assets/docs/BCCWF\\_The\\_New\\_Dad\\_2014\\_FINAL.157170735.pdf](http://www.thenewdad.org/yahoo_site_admin/assets/docs/BCCWF_The_New_Dad_2014_FINAL.157170735.pdf); Živa Humer & Saša Panić, *The Policy on Gender Equality in Slovenia*, Euro. Parliament 21, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510010/IPOL\\_STU%282015%29510010\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510010/IPOL_STU%282015%29510010_EN.pdf); Milda Seputyte, *Paternity Leave for Lithuanian Fathers?*, THE BALTIC TIMES (Jan. 19, 2005), <http://www.baltictimes.com/news/articles/11768/>; Piotr Michon, Anna Kurowska, & Irena Kotowska, *Poland*, LEAVE NETWORK (Apr. 2015), [http://www.leavenetwork.org/fileadmin/Leavenetwork/Country\\_notes/2015/poland.pm.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Country_notes/2015/poland.pm.pdf); *Czech Republic: Supporting Parental Care in Early Childhood and Protecting Children's Rights*, EUR. UNION, [http://europa.eu/epic/countries/czech-republic/index\\_en.htm](http://europa.eu/epic/countries/czech-republic/index_en.htm) (last visited May 10, 2016); Jirina Kocourkova, *Czech Republic*, LEAVE NETWORK (Apr. 2014), [http://www.leavenetwork.org/fileadmin/Leavenetwork/Country\\_notes/2014/CzechRep.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Country_notes/2014/CzechRep.pdf).

193. Linda Haas, *Slovenian Parental Leave – A Nordic Perspective*, 9th Annual Meeting of the Int'l Network on Leave Policies & Related Research, Indiana Univ.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Poland*, EVERY CULTURE, <http://www.everyculture.com/No-Sa/Poland.html> (last visited May 11, 2016).

198. Agota Scharle, *Attitudes to Gender Roles in the Czech Republic, Hungary and Poland*, GRINCOH at 8 (2015).

leave provisions, “in practice these are not fully implemented or used by families.”<sup>199</sup> In Czech Republic, however, a dual-earner dual-carer model is becoming more popular.<sup>200</sup> Poland is more supportive than Czech Republic of splitting paid parental leave evenly, though.<sup>201</sup>

In Bulgaria, mothers participate much more than fathers in childcare, though there has been a recent shift towards inclusivity for fathers.<sup>202</sup> Daily childcare in Romania is generally left to mothers or grandparents.<sup>203</sup> Only ten percent of mothers return to work before their child turns one year old and only fifty percent before their child turns two.<sup>204</sup>

#### 4. Conclusion

Asian, African, and South American countries tend to offer similar packages. For example, both Singapore and Philippines offer fathers seven days paid at one hundred percent.<sup>205</sup> Chile, Ecuador, Colombia, Venezuela, and Brazil all offer five–fourteen days paid at one hundred percent.<sup>206</sup> Djibouti, Rwanda, Algeria, and Uganda offer three to four days paid at varying amounts.<sup>207</sup> Leave in many of these countries is employer funded, which is not surprising as the leave periods are so short.

One anomalous country is Japan. Japan offers fifty-two weeks paid at sixty percent, but has only a 2.3 percent uptake. When a Japanese lawmaker decided to take a few weeks off after the birth of his son, he was heavily criticized for it.<sup>208</sup> He cited an “atmosphere” that makes it difficult for fathers to take leave in Japan, and insisted that men and women should be equals in both the home and the workplace.<sup>209</sup>

The most important takeaways in this section are that a higher percentage of salary paid during leave and feminist cultural attitudes combined correlate to higher levels in fathers taking parental leave. This is shown in Figure 4, which charts a region’s average compensation package grade and uptake levels. Note that the chart does not take into account the prevalence of feminist cultural attitudes, which could explain why Eastern

---

199. Scharle, *supra* note 198.

200. *Id.* at 9.

201. *Id.*

202. Bulgarian “To be a Dad” Campaign is Honored with “Project of the Year – 2014” Award, MEN CARE (June 11, 2015), <http://men-care.org/2015/06/11/bulgarian-to-be-a-dad-campaign-is-honored-with-project-of-the-year-2014-award/>.

203. Unicef, Knowledge, Attitudes and Practices on Parenting in Romania 61 (2007), [http://www.unicef.org/romania/English\\_KAP.pdf](http://www.unicef.org/romania/English_KAP.pdf).

204. *Id.* at 62.

205. Int’l Labour Org., *supra* note 74.

206. *Id.*

207. *Id.*

208. Isabel Reynolds, *This Japanese Lawmaker is Under Fire for Trying to Take Paternity Leave*, BLOOMBERG (Feb. 7, 2016), <http://www.bloomberg.com/news/articles/2016-02-07/japanese-lawmakers-new-baby-lays-bare-paternity-leave-divide>.

209. *Id.*

Europe has a higher average grade than Western Europe, but does not have as high uptake.

Region	Average Grade	Average Uptake
Scandinavia	3.9	88.6%
Western Europe	1.9	42.4%
Eastern Europe	2.85	33.88%

TABLE 6

## B. STATE PAID LEAVE

Three states offer paid leave: Rhode Island, New Jersey, and California. All three have been relatively successful. Each of these states tends to be progressive-leaning. California was listed by *Time* as one of the top five most “female-friendly” states to live.<sup>210</sup> California is ranked as the sixth best state for women’s income.<sup>211</sup> Rhode Island is eleventh and New Jersey is twentieth.<sup>212</sup>

### 1. Rhode Island

Rhode Island offers temporary caregiver benefits to eligible new parents, which is paid for by a payroll deduction.<sup>213</sup> The law is gender neutral and applies to both biological and adoptive parents.<sup>214</sup> Employees must give employers thirty days notice.<sup>215</sup> New parents are entitled to up to four weeks per year, paid at sixty percent of their pay (capped at \$770 per week).<sup>216</sup> During the period of leave, employees retain their benefits.<sup>217</sup> The statute took effect in 2014.<sup>218</sup>

By 2015, the law produced positive effects. Despite urgent warnings, paid leave has not hurt businesses.<sup>219</sup> Of the three states to offer paid parental leave, Rhode Island is the only state to guarantee workers a job to return to.<sup>220</sup> In its first year offering paid leave, a greater percentage of

210. *The 5 Best U.S. States for Women*, TIME, <http://newsfeed.time.com/2012/03/14/the-5-best-u-s-states-for-women/slide/all/> (last visited May 11, 2016).

211. Jordan Weissmann, *The States Where Women Make the Most (and Least) Compared to Men*, THE ATLANTIC (Sept. 27, 2013), <http://www.theatlantic.com/business/archive/2013/09/the-states-where-women-make-the-most-and-least-compared-to-men/280055/>.

212. *Id.*

213. RGCL § 28-41-35; *In R.I., Some Residents Gush About Paid Family Leave*, CBS MONEYWATCH (May 25, 2015), <http://www.cbsnews.com/news/in-r-i-some-residents-gush-about-paid-family-leave/>.

214. RGCL § 28-41-35.

215. *Id.*

216. *Id.*; *In R.I., Some Residents Gush About Paid Family Leave*, *supra* note 213.

217. RGCL § 28-41-35

218. *Id.*

219. *In R.I., Some Residents Gush About Paid Family Leave*, *supra* note 213.

220. *Paid Leave Works in California, New Jersey and Rhode Island*, Nat’l Partnership (Mar. 2015), <http://www.nationalpartnership.org/research-library/work-family/paid-leave/paid-leave-works-in-california-new-jersey-and-rhode-island.pdf>.

dads have taken leave in Rhode Island than in the first years of the California or New Jersey laws.<sup>221</sup>

## 2. New Jersey

In New Jersey, family medical leave compensation is covered under the disability insurance law.<sup>222</sup> According to the legislature, such coverage was necessary because “very few workers are protected from income losses caused by the need to take time off from work to care for . . . newborn and newly-adopted children.”<sup>223</sup> Other stated goals were to: reduce employee turnover, increase worker productivity, and improve the health, welfare, and security of the state.<sup>224</sup> The legislature also noted that, “the United States is the only industrialized nation in the world which does not have a mandatory workplace-based program for such income support.”<sup>225</sup> The statute also applies to new biological and adoptive parents.<sup>226</sup>

Workers can choose a state or private insurance plan.<sup>227</sup> Under the state plan, claimants are paid two-thirds of their weekly average pay, up to a ceiling of \$615.00 per week (and this amount increases each year).<sup>228</sup> The state plan is financed by worker payroll deductions.<sup>229</sup> Private plans provided by employers must provide at least as much as the state plan and cannot cost workers more than the state plan costs.<sup>230</sup>

New Jersey’s paid family leave has been around since 2009 and results have been positive. The tax costs less than \$1.00 per week per employee.<sup>231</sup> A 2012 study by Rutgers University showed that nearly seventy percent of employers stated that paid leave had either no effect or a positive effect on their businesses.<sup>232</sup> Another benefit is that women who took paid parental leave were forty percent less likely to receive public aid

---

221. 2008 NJ Sess. Law Serv. Ch. 17.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. NJ ST 43:21-25.

227. *Family Leave Insurance*, State of N.J. Dep’t of Labor and Workforce Dev., <http://lwd.dol.state.nj.us/labor/fli/fliindex.html> (last visited May 11, 2016).

228. *Benefit Calculation and Duration of Benefits*, Dep’t of Labor and Workforce Dev., [http://lwd.dol.state.nj.us/labor/fli/worker/state/FL\\_SP\\_calculating\\_benefits.html](http://lwd.dol.state.nj.us/labor/fli/worker/state/FL_SP_calculating_benefits.html) (last visited May 11, 2016).

229. *Cost to the Worker*, State of N.J. Dep’t of Labor and Workforce Dev., <http://lwd.dol.state.nj.us/labor/fli/content/cost.html> (last visited May 11, 2016).

230. *Family Leave Private Plan – General Information*, State of N.J. Dep’t of Labor and Workforce Dev., [http://lwd.dol.state.nj.us/labor/fli/worker/private/family\\_leave\\_pp\\_general\\_information.html](http://lwd.dol.state.nj.us/labor/fli/worker/private/family_leave_pp_general_information.html) (last visited May 11, 2016).

231. Dory Devlin, *What Would it Cost to Have Mandatory, Paid Parental Leave?*, FORTUNE (Feb. 5, 2015).

232. *Id.*

or food stamps.<sup>233</sup> Further, “[w]omen who took leave and returned to their jobs worked 15 to 20 percent more hours during the second year of their child’s life than those who did not take leave.”<sup>234</sup> Women who take leave are also far more likely to return to work within nine to twelve months after giving birth.<sup>235</sup>

The number of paid leave claims to care for newborns more than doubled from 2009 to 2011.<sup>236</sup>

### 3. California

California passed paid family leave in 2002.<sup>237</sup> The legislature found that, “[w]hen workers do not receive some form of wage replacement during family care leave, families suffer from the worker’s loss of income, increasing the demand on the state unemployment insurance system and dependence on the state’s welfare system.”<sup>238</sup> Like Rhode Island and New Jersey’s leave, California funds family leave through employee contributions.<sup>239</sup> Individuals may take up to six weeks of leave, paid at fifty-five percent of their average weekly pay,<sup>240</sup> to care for a newborn or adopted child.<sup>241</sup>

Paid family leave costs employees about thirty dollars per year.<sup>242</sup> The vast majority of businesses have said “the program has had a positive or no negative effect on profitability and performance (91 percent), productivity (89 percent), turnover (93 percent) and employee morale (99 percent).”<sup>243</sup> The program is popular—about ninety percent of claims have been for parental leave, rather than to care for seriously ill family members.<sup>244</sup> By 2015, the number of paid leave taken by men increased by over four hundred percent.<sup>245</sup>

---

233. Claire Cain Miller, *The Economic Benefits of Paid Parental Leave*, N.Y. TIMES (Jan. 30, 2015), [http://www.nytimes.com/2015/02/01/upshot/the-economic-benefits-of-paid-parental-leave.html?\\_r=0](http://www.nytimes.com/2015/02/01/upshot/the-economic-benefits-of-paid-parental-leave.html?_r=0).

234. Miller, *supra* note 233.

235. Rachel Gillett, *The Science Behind Why Paid Parental Leave is Good for Everyone*, BUS. INSIDER (Aug. 5, 2015), <http://www.businessinsider.com/scientific-proof-paid-parental-leave-is-good-for-everyone>.

236. Karen White, Linda Houser, & Elizabeth Nisbet, *Policy in Action: New Jersey’s Family Leave Insurance Program at Age Three*, Rutgers Ctr. for Women & Work 17 (2013).

237. Bartel et al., *infra* note 246.

238. West’s Ann.Cal.Un.Ins.Code § 3300 (2014).

239. *Id.*

240. Devlin, *supra* note 231.

241. West’s Ann.Cal.Un.Ins.Code § 3301 (2014).

242. Devlin, *supra* note 231.

243. *Id.*

244. *Id.*

245. *Id.*

As of 2015, forty-eight percent of men took paid leave in California.<sup>246</sup> Thirty percent of paid family leave claims were filed by men.<sup>247</sup> Notably, the law has led to an increase in women taking maternity leave as well.<sup>248</sup> One strange finding is that men were *fifty percent* more likely to take leave for sons than for daughters.<sup>249</sup> Married, working mothers are more likely to take leave alone (instead of at the same time as fathers) for daughters than sons.<sup>250</sup> Fathers are more likely to take leave for their first child, but this does not apply to mothers.<sup>251</sup> In any case, one of the most important results is that the largest impact has been on low-income families.<sup>252</sup>

### C. UNITED STATES PROPOSALS

On September 7, 2015, President Barack Obama signed an executive order “requiring federal contractors to offer their employees up to seven days of paid sick leave per year.”<sup>253</sup> Earlier in the year, he issued a presidential memorandum “directing the federal government to advance up to six weeks of paid sick leave in connection with the birth or adoption of a child.”<sup>254</sup> While Obama has called on Congress to provide six weeks of paid parental leave for non-federal workers,<sup>255</sup> his opposition is rehashing the same criticisms of the original FMLA. Recall the familiar refrain, *it’ll hurt businesses*.<sup>256</sup> Under President Donald Trump, a picture of old men making decisions over maternity leave policy has made its way around the internet.<sup>257</sup> Supreme Court nominee, Neil Gorsuch has indicated that he

---

246. Ann Bartel et al., *Paid Family Leave, Fathers’ Leave-Taking, and Leave-Sharing in Dual-Earner Households*, Dep’t of Labor 4 (Nov. 2015), [http://www.dol.gov/asp/evaluation/completed-studies/Paid\\_Family\\_Leave\\_Fathers\\_Leave\\_Taking\\_and\\_Leave\\_Sharing\\_in\\_Dual\\_Earner\\_Households.pdf](http://www.dol.gov/asp/evaluation/completed-studies/Paid_Family_Leave_Fathers_Leave_Taking_and_Leave_Sharing_in_Dual_Earner_Households.pdf).

247. *Id.* at 7.

248. *Id.* at 15.

249. Bartel, *supra* note 246, at 16.

250. *Id.*

251. *Id.* at 17.

252. Jane Waldfogel, *Why 16-Week Paid Parental Leave Policies are Revolutionary for U.S. Workers*, WASH. POST (Oct. 8, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/10/08/why-16-week-paid-parental-leave-policies-are-revolutionary-for-u-s-workers/>.

253. Helping Middle-Class Families Get Ahead by Expanding Paid Sick Leave, Whitehouse.gov (2015), <https://www.whitehouse.gov/the-press-office/2015/09/07/fact-sheet-helping-middle-class-families-get-ahead-expanding-paid-sick> (last visited May 12, 2016).

254. *Id.*

255. Ben Wolfgang, *Obama Paid-Leave Mandate Runs Into GOP Opposition*, WASH. TIMES (Jan. 15, 2015), <http://www.washingtontimes.com/news/2015/jan/15/obama-paid-family-leave-mandate-runs-into-republic/?page=all>.

256. *Id.*

257. German Lopez, *This is a Photo of Lawmakers Discussing Taking Away Maternity Coverage*, VOX, Mar. 23, 2017, <http://www.vox.com/identities/2017/3/23/15041620/ahca-men-maternity-coverage>.



thinks employers *should* question women about whether they plan to take maternity leave.<sup>258</sup>

Although the future of maternity and paternity leave may seem bleak, it's not only Democrats who recognize the need for improvements to the FMLA. Republican Senator Marco Rubio's plan offers a "25% non-refundable tax credit for businesses that voluntarily offer at least four weeks of paid family leave, limited to twelve weeks of leave and \$4,000 per employee each year."<sup>259</sup> His plan is modeled on the Strong Families Act<sup>260</sup> (SFA).<sup>261</sup>

The SFA would amend the Internal Revenue Code to "allow certain employers a business-related tax credit for up to 25% of the amount of wages paid to their employees during any period (not exceeding 12 weeks) in which such employees are on family and medical leave."<sup>262</sup> The bill would also require a study done to assess the effectiveness within three years of its passing.<sup>263</sup> What the bill (or Senator Rubio's plan) doesn't do is address the lack of men taking parental leave. Offering paid leave is certainly the first and most important step in getting new fathers to take time off, but the SFA does nothing to remedy the fears fathers have when it comes to taking leave.

Senator Kirsten Gillibrand has offered her own family leave plan called the Family and Medical Insurance Leave Act (FMILA).<sup>264</sup> The bill notes that the estimated cost of unpaid family leave in 2009 was \$450 billion.<sup>265</sup> Individuals would be permitted up to sixty days of paid leave.<sup>266</sup> The pay scheme is a bit complicated, but would look like this: workers will be paid the greater of (a) the minimum amount determined by  $\$5(2)^{267}$  multiplied by the quotient ( $< 1$ ) obtained by dividing the number of caregiving days in such month by twenty<sup>268</sup> or (b) the lesser of (i) 1/18 wages and self-employment income for the calendar year in which earnings are the highest

---

258. Nicole Hensley, *SCOTUS nominee Neil Gorsuch Said Women "Manipulate" Maternity Leave, Boulder Graduates Say*, N.Y. DAILY NEWS, Mar. 20, 2017, <http://www.nydailynews.com/news/politics/scotus-nominee-gorsuch-women-manipulate-maternity-leave-article-1.3002918>.

259. *How Marco Rubio Wants to Help Working Families*, Marco Rubio, <https://marco.rubio.com/news/how-marco-wants-to-help-working-families/> (last visited Apr. 25, 2016).

260. Strong Families Act, S. 2354, 114th Cong. (2015).

261. Marco Rubio, *supra* note 259.

262. S. 2354 – *Strong Families Act*, Congress.gov, <https://www.congress.gov/bill/114th-congress/senate-bill/2354> (last visited May 12, 2016).

263. Strong Families Act, S. 2354 §3, 114th Cong. (2015).

264. S. 786, 114th Cong. (2015).

265. S. 786 §2(5), 114th Cong. (2015).

266. S. 786, 114th Cong. (2015).

267. The minimum amount is \$580, but will change after the first year the bill is enacted. S. 786 §5, 114th Cong. (2015).

268. S. 786 §5 114th Cong. (2015).

of the most recent three years *or* (ii) the maximum benefit amount provided later in the bill.<sup>269</sup>

This should be unpacked a little. 1/18 of wages and self-employment income essentially means that a worker will receive two-thirds of their regular pay. So the maximum amount a worker can get during leave is either ~66.7 percent of their salary or \$4,000 per month, whichever is less. And the minimum an eligible worker will receive is \$580 (unless fewer than twenty days are taken, in which case they will multiply \$580.00 by the number of days taken divided by twenty). The median income is about \$27,000.00 per year.<sup>270</sup> Divided by twelve, that's about \$2,250 per month, which falls squarely between the statutory minimum and maximum amounts available. Although Senator Gillibrand's stated motivations for this bill include allowing both women and men to participate in childcare, this bill still does not address specifically the lack of men taking leave. Paid leave is an indispensable first step, but it is likely not enough due to the lack of feminist influence in American cultural attitudes.

Neither the SFA nor the FMLA requires a "daddy quota." There is no reason to believe that the same concerns fathers have now will be alleviated by only paying them to take leave. While it is true that fathers are more likely to take leave when paid, paying them does not solve the problems of employers viewing them differently and fears of losing their jobs or promotions.

#### D. MY PROPOSAL

In this section, I will discuss the following: (1) time offered; (2) pay offered; (3) method of funding; and (4) other relevant factors. Because the Scandinavian countries have the highest uptake levels among fathers and the lowest rates of child poverty, they will be my main models for proposing an American system. However, there are some changes proposed.

##### 1. Time Offered

Not only should more than twelve weeks be offered, but we should institute a "daddy quota" in order to ensure that men are able to take leave. Currently, if both parents are eligible, they can each take twelve weeks unpaid leave. My proposal would permit both parents twelve weeks paid leave, and then an additional twelve weeks of paid leave which could be split. Leave can be taken concurrently. This is not as much leave as is offered by the successful Scandinavian countries, but would be a good start. Of the offered thirty-six weeks, I would require that twelve of those

---

269. S. 786 §5 114<sup>th</sup> Cong. (2015). The maximum amount is \$4,000. *Id.*

270. *What is Your U.S. Income Percentile Ranking?*, TOWNHALL FINANCE (Sept. 29, 2013), <http://finance.townhall.com/columnists/politicalcalculations/2013/09/29/what-is-your-us-income-percentile-ranking-n1712430/page/full>.

weeks be used by the father or lost. Each year, success of the program should be studied and measured. The length of paid leave should be extended on an annual or bi-annual basis to match the recommended nine months when infants develop their sense of trust.<sup>271</sup>

Many countries require some time be taken off at certain point in the child's life. In order to promote father-newborn bonding and to help the physically and emotionally recovering mother, I would require that at least two of the father's weeks be used within the first three weeks of the child's life. This requirement would still apply to couples who used a surrogate. In the case of adoptive and same-sex parents, both parents should take at least two weeks off during the first three weeks of the child's life. The remaining ten weeks should be used at the father's discretion within the first six months of the child's life. And the twelve weeks to be split between parents should be used within the first two years of the child's life. These requirements are based on studies that show the importance of parent-child bonding in the early stages of an infant's life.

Parents should also have the option to extend their leave if they work part time. In other words, a parent could extend six weeks into twelve weeks by working part time. In such cases, however, it would be necessary to institute a strict restriction on hours worked. Part time work during paternity leave should not be more than thirty hours per week.

## 2. Pay

Fathers are more likely to take leave when paid as close to their salary as possible. Using the Scandinavian countries as models, it is clear that a combination of lengthy leave, a daddy quota, and high pay results in fathers taking leave. For this reason, the first twelve weeks should be paid at one hundred percent of the worker's salary. The twelve weeks to be split between parents should be paid at eighty percent, which is the percentage Iceland pays while retaining a high uptake rate. There should not be a ceiling during the first twelve weeks in order to fully encourage parents to take leave, and to ensure that they are financially stable during those twelve weeks. This is especially important as paid leave in California has been more helpful for low income families than any other economic group.

## 3. Funding

Like in California, New Jersey, and Rhode Island, a payroll tax should be instituted. And, like in those states, the tax should be minimal. The FMLA calls for a 0.2 percent tax.<sup>272</sup> California's payroll tax is 1.2 percent,

---

271. *Supra* note 129 and accompanying text.

272. S. 786 (114th Cong.) 2016.

which also pays for social disability insurance.<sup>273</sup> New Jersey's paid family leave tax is .08% up to a wage base of \$32,600.00.<sup>274</sup> In Rhode Island, the tax is 1.2 percent on the worker's first \$64,200.00.<sup>275</sup> Because I am proposing there be no cap on paid leave, there should also be no cap on what percentage of income the payroll tax applies to.

In Norway, parental leave is funded by general taxation and collective bargaining agreements.<sup>276</sup> Swedish leave is funded by an employer fee (2/3) and taxes (1/3).<sup>277</sup> In Iceland, leave is funded by an insurance levy.<sup>278</sup> Finland funds leave by a combination of employer and employee contributions.<sup>279</sup> In Denmark, leave is funded by state and general taxation.<sup>280</sup> Other countries fund leave by employers (i.e.: Netherlands,<sup>281</sup> Romania,<sup>282</sup> Rwanda<sup>283</sup>) and social insurance (i.e.: Colombia,<sup>284</sup> France,<sup>285</sup> Spain<sup>286</sup>). But because of the success of the small payroll tax in California, Rhode Island, and New Jersey, it would be better to follow these American laws already in place.

Employers should also pay a small yearly tax apart from the payroll deduction. In order to encourage parental leave uptake, the tax should be fully refundable if at least eighty percent of women and eighty percent of men take a minimum of twelve weeks paid leave after the birth (or adoption) of a child. So, it would not be eighty percent total, but eighty percent of men separately from eighty percent of women. This incentivizes employers to encourage fathers to take leave in order to receive a refund of

273. Ellen Appelbaum & Ruth Milkman, *Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California*, CTR. FOR L. & SOCIAL POL'Y 2, <http://www.clasp.org/resources-and-publications/publication-1/LeavesThatPay.pdf>.

274. *New Jersey State Tax Info.*, Payroll Taxes, <http://www.payroll-taxes.com/state-tax/new-jersey> (last visited May 12, 2016).

275. Shana Pearson-Merkowitz & Rachel-Lyn Longo, *Ensuring-Paid-Family-Leave-Pays-Off*, THE COLLABORATIVE, <http://collaborativeri.org/wp-content/uploads/2015/05/Ensuring-Paid-Family-Leave-Pays-Off1.pdf>.

276. Berit Brandth & Elin Kvande, *Norway*, LEAVE NETWORK 2 (Apr. 2013), [http://www.leavenetwork.org/fileadmin/Leavenetwork/Country\\_notes/2013/Norway.FINALcitation.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Country_notes/2013/Norway.FINALcitation.pdf).

277. Gabe Stein, *How Sweden Affords the Best Paid Paternity Leave in the World*, MUCH IS SAID IN JEST (Nov. 4, 2010), <http://www.muchissaidinjest.com/2010/11/04/how-sweden-affords-the-best-paid-paternity-leave-in-the-world/>.

278. Guðný Björk Eydal & Ingólfur V. Gíslason, *Iceland*, LEAVE NETWORK 1 (Apr. 2013), [http://www.leavenetwork.org/fileadmin/Leavenetwork/Country\\_notes/2013/Iceland.FINALcitation.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Country_notes/2013/Iceland.FINALcitation.pdf).

279. Minna Salmi & Johanna Lammi-Taskula, *Finland*, LEAVE NETWORK 1 (Apr. 2015), [http://www.leavenetwork.org/fileadmin/Leavenetwork/Country\\_notes/2015/finland.pm.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Country_notes/2015/finland.pm.pdf).

280. Lotte Bloksgaard & Tine Rostgaard, *Denmark*, LEAVE NETWORK 1 (Apr. 2015), [http://www.leavenetwork.org/fileadmin/Leavenetwork/Country\\_notes/2015/denmark.pm.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Country_notes/2015/denmark.pm.pdf).

281. Int'l Labour Org., *supra* note 74.

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

taxes paid. On top of the refund, employers should receive a nonrefundable credit equal to the refundable tax when greater than eighty percent of fathers and eighty percent of mothers take at least twelve weeks leave each. These incentives will both help businesses hire temporary replacements for parents on leave as well as shift attitudes of employers towards fathers who wish to take leave.

#### 4. Other Relevant Factors

Because many employers only allow a "primary parent" to take paid leave, this requires parents to designate themselves as primary or secondary when that may not be the case. In modern American families, it is not uncommon for parents to be co-primary caregivers. For this reason, labeling a parent as primary or secondary should not be permitted.

The FMLA requirement that a job be available when parents return to work is extremely important. In Germany, many fathers have found that their job no longer exists when they are done with paternity leave.<sup>287</sup> This must go a step further, though, to help assuage fears many men (and women) have with regard to losing their job after taking leave. Recall the story, *supra*, about the man whose job suddenly became part time, but months later was returned to full time after someone else had been hired to fill the position.<sup>288</sup> It is imperative for situations like this to be not only avoided but for the perception men have of this sort of thing happening to be changed. For this reason, courts should apply a presumption against the employer whenever a job is no longer available following paternity leave.

In sum, there are 6 main parts to my plan: (1) men and women should be given twelve weeks each, nontransferrable, and twelve weeks to be split as chosen, with the amount of time expanding each year; (2) for the first twelve weeks, salary should be paid at one hundred percent, and thereafter at eighty percent; (3) this program should be funded by a small payroll tax as well as a refundable employer tax; (4) employers should receive a refund and a nonrefundable credit when eighty percent of mothers and eighty percent of fathers are in compliance; (5) there should be a job guarantee in place; and (6) employers should not be permitted to designate one parent as a "primary parent." These changes can be made to the FMLA.

### V. CONCLUSION

The United States lagged behind the rest of the industrialized world when it came to unpaid parental leave, and it now lags behind the rest of the world in paid parental leave. All countries besides the United States and Papua New Guinea offer paid maternity leave and the vast majority of

---

287. Int'l Labour Org., *supra* note 74.

288. *Supra* note 82 and accompanying text.

nations offer paid paternity leave. Parental leave is important for the economy, children, and gender equality.

Several barriers exist for men who wish to take time off to spend with newborns and newly adopted children. They fear losing their job, losing promotional opportunities, and losing the respect of their employer and peers. Meanwhile, after giving birth mothers physically and emotionally need help. Women fear taking long periods of leave for similar reasons as fathers. Women also face a perceived discrimination in hiring because some employers fear that they will take maternity leave and/or not return to work. Both men and women have a hard time taking parental leave when it is unpaid for obvious financial reasons.

While my proposals offer a large step towards promoting equality for mothers and fathers, I predict that men will not take much of the additional twelve weeks of parental leave. Fundamental changes in our culture are necessary for men and women to truly be equal both as parents and as workers. I would also advocate for a governmental office focused on gender equality, much like in many of the Scandinavian countries. However, the specifics of such an office are beyond the scope of this article.

A feminist outlook allows us to look beyond the typical gender binary which relegates men to one role and women to another. It is also important in tearing down the perception of men as the standard worker and therefore men's needs as the standard workers' needs and women as different or other. We must be able to view women as equally valid workers in order to view paid maternity leave as a necessary and positive part of a worker's career. At the same time, our perception of women as the standard caretaker must also change.

Investing in paid parental leave for both sexes will benefit businesses in the long run. Further, when parents can financially afford to spend more time at home with their infants, they are helping to create better-adjusted and happier adults who will eventually also be entering the workforce. Treating men and women as equal workers and caretakers increases happiness levels in both sexes. It is a necessary long term investment, which is already paying off in countries where parents receive paid leave.

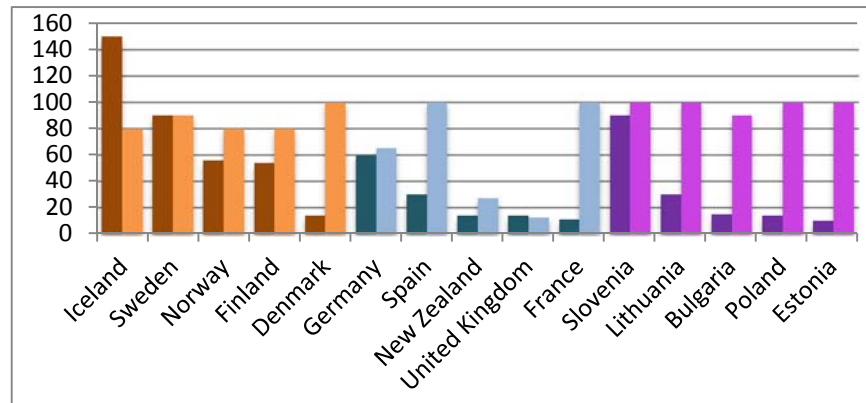
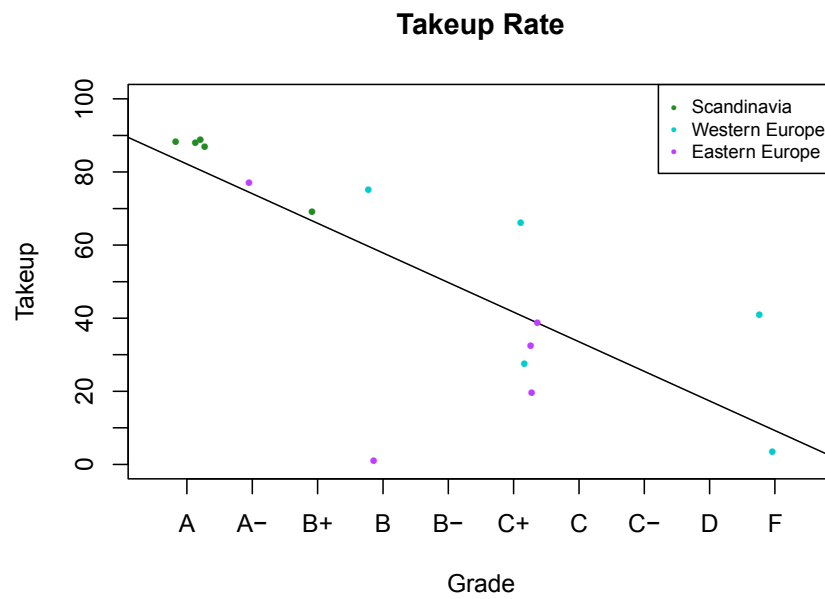


FIGURE 1<sup>289</sup>

289. In Figure 1, the dark colors represent the number of days offered. The light colors represent the percentage of salary that is paid during leave. For some countries, such as the U.K. and New Zealand, where a flat rate is offered, percentage paid was calculated by using the median salary as the standard.



**FIGURE 2**<sup>290</sup>

290. Figure 2 shows the takeup rates for each of the three regions discussed. Although there are a few outliers, which can at least partly be accounted for by cultural differences, there is a general trend of better leave packages leading to higher takeup.